

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
Triangle Communication System,)	
Inc.)	
)	
Petition for FCC Agreement to)	
Redefine the Study Areas of Two Rural)	
Telephone Companies in Montana)	
 To: Wireline Competition Bureau		

PETITION FOR REDEFINITION

Triangle Communication System, Inc. (“TCS”), by its attorneys, pursuant to Section 214(e)(5) of the Communications Act of 1934, *as amended*, (“Act”) and Federal Communications Commission (“FCC”) Rule 54.207, hereby submits this Petition for FCC Agreement to Redefine the Study Areas of two Rural Telephone Companies in Montana (“Petition”). Specifically, TCS seeks FCC agreement with the Montana Public Service Commission’s (“MPSC”) redefinition of certain wire centers as separate service areas of two rural telephone companies: Triangle Telephone Cooperative Association, Inc. (“TTCA”) and Central Montana Communications, Inc. (“CMC”).¹

¹ See *In the Matter of the Application of Triangle Communication System, Inc. Application for Designation as a Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Final Order Designating Eligible Telecommunications Carrier, Order No. 6723a (May 8, 2007) (“Order”). See also *In the Matter of the Application of Triangle Communication System, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Final Order, Order on

I. INTRODUCTION

On January 16, 2004, TCS filed with the MPSC its Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in order to receive Federal universal service support pursuant to § 254 of the Telecommunications Act of 1996.² In its *ETC Petition*, TCS proposed to serve only a portion of the study areas of TTCA and CMC, two Montana incumbent rural local exchange carriers (“LECs”). TCS, therefore, requested that the MPSC redefine these rural telephone companies’ study areas.³

The Act dictates that an ETC will be designated in a service area determined by the appropriate state commission.⁴ The term “service area” means a geographic area established by a state commission.⁵ In the case of an area served by a rural telephone

Reconsideration, Order No. 6723b (July 26, 2007) (“*Final Order on Reconsideration*”). The *Order* is attached hereto as Exhibit A. The *Final Order on Reconsideration* is attached hereto as Exhibit B.

² *In the Matter of the Application of Triangle Communication System, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Petition of Triangle Communication System, Inc. for Designation as an Eligible Telecommunications Carrier (January 16, 2004) attached hereto as Exhibit D.

³ On November 23, 2005, TCS amended its *ETC Petition* to redefine the study areas of TTCA and CMC. On January 20, 2006, TCS again amended its *ETC Petition* to include an additional wire center in CMC’s study area. *In the Matter of the Application of Triangle Communication System, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Amended Petition of Triangle Communication System, Inc. for Designation as an Eligible Telecommunications Carrier (November 23, 2005) (“*Amended Petition*”) attached hereto as Exhibit E; *In the Matter of the Application of Triangle Communication System, Inc. Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Further Amended Petition of Triangle Communication System, Inc. for Designation as an Eligible Telecommunications Carrier (January 20, 2006) (“*Further Amended Petition*”) attached hereto as Exhibit F (the January 16, 2004 Petition, November 23, 2005 *Amended Petition* and January 20, 2006 *Further Amended Petition* are referred to collectively herein as “*ETC Petition*”).

⁴ 47 U.S.C. § 214(e)(2).

⁵ 47 U.S.C. § 214(e)(5).

company,⁶ service area means “study area” unless and until the FCC and the state commission, after taking into consideration recommendations of the Federal-State Joint Board (“Joint Board”), establish a different definition of service area for such company.⁷

The Act requires that the state commission take into consideration the Joint Board’s recommendations when redefining a rural telephone company’s study area.⁸ In its *Recommended Decision*, the Joint Board outlined its concerns for redefining a rural telephone company’s service area.⁹ These concerns include: (1) minimizing rural “cream skimming;” (2) recognizing that the Act places rural telephone companies on a different competitive footing from other carriers; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.¹⁰

On May 8, 2007, the MPSC adopted its Order granting TCS’s *ETC Petition*.¹¹ On June 15, 2007, the Montana Consumer Counsel (“MCC”) and the Montana Telecommunications Association (“MTA”) each filed Motions for Reconsideration. On July 26, 2007, the MPSC adopted its *Final Order on Reconsideration* denying MCC and MTA’s reconsideration requests and affirming the designation of TCS as an ETC for the

⁶ 47 U.S.C. § 153(37) (definition of a rural telephone company).

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

⁸ 47 U.S.C. § 214(e)(5).

⁹ *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, ¶¶ 172- 174 (1996) (“*Recommended Decision*”); see also *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, FCC 03-338 ¶ 38 (January 22, 2004) (“*Virginia Cellular Order*”).

¹⁰ See generally *Recommended Decision*; see also *RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532 (2002) (“*RCC Holdings*”).

¹¹ See *Order*.

purposes of receiving Federal universal service support.¹² Specifically, the MPSC redefined the service area of TTCA and CMC, two rural telephone companies, to include individual wire centers that are geographically consistent with the area for which TCS has or can obtain 800 MHz licenses.¹³ As a result of this redefinition, each wire center that TCS serves in its entirety is a separate service area of TTCA and CMC. In its *Order*, the MPSC addressed the Joint Board's concerns enumerated above.¹⁴ Pursuant to the FCC's Rules, a state commission or other party seeking FCC agreement in redefining a service area served by a rural telephone company shall submit a petition to the FCC.¹⁵ Accordingly, TCS submits this Petition for FCC agreement with the MPSC's redefinition of TTCA and CMC's rural service areas. Pursuant to FCC Rule Section 54.207(c)(1), this petition includes: (1) the definition proposed by the state commission, and (2) the state commission's ruling or other official statement presenting the state commission's reasons for adopting its definition including an analysis that takes into consideration the Joint Board's recommendations.¹⁶

II. DISCUSSION

TCS requests FCC agreement with the MPSC's redefinition of TTCA and CMC's rural study areas to include each wire center as a separate service area. The MPSC's *Order* designates TCS as an ETC within a redefined study area that comprises those complete wire centers of the two incumbent rural telephone companies that are

¹² See *Final Order on Reconsideration*.

¹³ See generally *Order*. The MPSC stated that it finds merit in approving TCS's proposal to redefine the service area of TTCA and CMC. Specifically, the MPSC stated that its "finding of merit is not without concern, but its concerns do not outweigh the expected benefits of designating TCS as an ETC in the redefined study areas." See *Order* at 32.

¹⁴ See generally *Order*; see also *Final Order on Reconsideration*.

¹⁵ 47 C.F.R. § 54.207.

¹⁶ 47 C.F.R. § 54.207(c).

geographically consistent with the area for which TCS has or can obtain 800 MHz licenses for provisioning telecommunications services.¹⁷ These wire centers are listed in Exhibit C.

The MPSC's *Order* and *Final Order on Reconsideration* were the culmination of a lengthy proceeding that began in January of 2004. In its initial petition, TCS affirmed its support of a Joint Petition filed by the Montana Independent Telecommunications Systems and the MTA, encouraging the MPSC to adopt stringent rules for ETC designation and certification in Montana. Subsequently, in April 2005, the MPSC became one of the first state commissions in the nation to adopt ETC rules. The rules establish a rigorous and comprehensive process for ETC designations and certifications. The rules establish clear and rational standards and requirements for ETC designation that ensure ETCs continuously comply with the Federal universal service principles. The rules require new ETCs to commit to building out their networks to expand telecommunications coverage. The PSC rules adopt strict provisions for service quality oversight and require ETCs and competitive ETCs ("CETC") to submit compliance reports for Commission review.¹⁸

TCS has meticulously complied with the MPSC's ETC rules and the FCC's guidelines established for consideration of requests for ETC designation. The MPSC granted TCS's petition after thorough analyses and serious deliberations. Its order establishes a positive precedent for other carriers to follow. It sends a clear signal that the MPSC does not take lightly either its responsibilities or the responsibilities of ETCs.

¹⁷ See *Amended Petition* at 1; see also *Order* at 32. See exhibit C for the list of wire centers included in MPSC's proposed definition.

¹⁸ The MPSC's ETC Rules can be accessed here: <http://arm.sos.state.mt.us/38/38-435.1.htm>.

The MPSC's *Order* affirms that it is good public policy to designate TCS as an ETC within the area requested. The MPSC decision will result in the deployment of cellular services in some of the most remote areas of the very large rural State of Montana. It will provide consumers in these rural frontier areas¹⁹ access, for the first time, to telecommunications services comparable to those provided in urban Montana. This is consistent with the FCC's universal service goals and the goals of the Telecommunications Act of 1996. The MPSC's reasons for adopting its definition are set forth below.

In its *Order* and *Final Order on Reconsideration*, the MPSC designated TCS as an ETC in the study areas of TTCA and CMC and adopted TCS's service area definition. Pursuant to FCC Rule 54.207(c), TCS notes that the MPSC's analysis included consideration of the Joint Board's study area redefinition recommendations. Among other factors, the MPSC considered: (1) whether TCS is attempting to "cream skim" by only proposing to serve the lowest cost exchanges; (2) the rural carriers' special status under the Act; and (3) the administrative burden these LECs would face by calculating their costs on a basis other than their entire study areas. The MPSC's analysis is discussed below.

¹⁹ According to 2004 U.S. Census data, the population of the three counties within the area proposed for redefinition is as follows: Blaine County - 6,668 persons; Liberty County - 2,020 persons; and Phillips County - 4,201 persons. The combined geographical area of the three counties is 8,570 square miles. This equates to about 1.5 people per square mile.

A. TCS is Not Attempting to Cream Skim

Rural “cream skimming” occurs when competitors serve only the low-cost, highest revenue customers in a rural telephone company’s study area.²⁰ TCS based its requested ETC area on its licensed service area and requested redefinition at the wire center level in accordance with the FCC’s *Highland Cellular* Order.²¹ Pursuant to *Highland Cellular*, the FCC analyzes several factors to determine whether the CETC is attempting to cream skim, including the service area in which the ETC applicant requests designation, whether the incumbents have taken advantage of disaggregation, and population density.

The MPSC noted that although neither TTCA nor CMC opted to disaggregate their respective service areas, the MPSC does not believe it is necessary for them to do so in order to prevent cream skimming. The MPSC stated that TTCA and CMC can take advantage at any time of the opportunity to disaggregate and target universal service support at the exchange level within their service territories, based on their estimated cost to serve each exchange, thus virtually eliminating any concerns about cream skimming.²² The Joint Board and the FCC have recognized that targeting support in this manner reduces concerns of rural cream skimming.²³

²⁰ See *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 6438, ¶ 26 (“*Highland Cellular Order*”) (2004).

²¹ See generally *Highland Cellular Order*.

²² See *Order* at 33.

²³ See *Federal – State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, FCC 04J-1 ¶¶ 54-55 (February 27, 2004); see also *RCC Holdings* ¶ 39.

In its *ETC Order*, however, the FCC stated that disaggregation does not address all cream skimming concerns.²⁴ The FCC found that cream skimming may still be a concern when a competitor proposes to serve only the low-cost areas to the exclusion of high-cost areas in a rural telephone company's service area.²⁵ The FCC, therefore, analyzes the population densities of the affected wire centers in order to ensure that designating the applicant as an ETC in portions of rural LEC service areas would not result in cream skimming.²⁶

TCS conducted a population density analysis in the areas in which it requested study area redefinition at the wire center level. TCS's combined access-line density analysis revealed that there is no cream skimming of low-cost areas.²⁷ The MPSC concluded that "...TCS has not targeted the low cost, high density parts of TTCA's and CMC's 'service area'."²⁸ Further, the MPSC states that, "...based on measures of density ...cream skimming is not likely."²⁹ Accordingly, the MPSC found that TCS's redefinition of TTCA and CMC's study areas will not result in cream skimming.³⁰

TCS is committed to serve *all* the incumbent LECs' exchanges that fall within its 800 MHz license. Further TCS is committed to serve the areas within those incumbent LECs' exchanges that are presently unserved by a wireless carrier and that are best suited for creating a contiguous wireless service area within which TCS can expand its wireless

²⁴ *In re Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 ¶ 51 (March 17, 2005) ("*ETC Order*").

²⁵ *See id.* ¶ 49.

²⁶ *See id.* ¶¶ 50-51.

²⁷ *See Order* at 33.

²⁸ *See id.* at 8, footnote 17.

²⁹ *See id.* at 32.

³⁰ *See id.* at 34; *see also Final Order on Reconsideration* at 20.

footprint in compliance with the 98% geographic coverage standard,³¹ in a cost effective manner. TCS is the only CETC in the requested redefined study area. Without TCS's ETC service, consumers in portions of its ETC service area would not otherwise have wireless service. Therefore, the MPSC found that TCS's proposal to redefine TTCA and CMC's study areas is in the public interest.³²

B. The MPSC Considered TTCA and CMC's Special Status under the Act

In its *Order*, the MPSC recognized the special status of rural carriers TTCA and CMC.³³ By addressing the FCC and Joint Board's cream skimming concerns, discussed *supra*, and by finding TCS's ETC designation in the public interest, the MPSC duly recognized the special status of the rural carriers in determining that TCS's ETC service area should be redefined. Acknowledging that the Act places rural telephone companies on a different competitive footing,³⁴ the MPSC stated, "...the PSC approves of TCS's proposal to redefine the study areas of each of TTCA and CMC. Approval of TCS's redefinition proposal is in the public interest."³⁵

C. Redefining the Rural LEC Service Areas Will Not Be Administratively Burdensome on the Affected LECs

The MPSC considered the administrative burden a rural LEC would face by calculating its costs on a basis other than its entire study area.³⁶ The MPSC stated that the FCC has determined the redefinition of the study area does not affect the embedded costs of the rural LEC or the amount of universal service support that it receives.³⁷ The

³¹ As required by the MPSC's Rules, TCS will provide -104 dBm coverage.

³² See *Order* at 34; see also *Final Order on Reconsideration* at 10.

³³ See generally *Order*.

³⁴ See *id.* at 4.

³⁵ See *id.* at 34.

³⁶ See *Amended Petition* at 4; see also *Order*; see also *RCC Holdings*.

³⁷ See *Order* at 4, footnote 7; see also *Final Order on Reconsideration* at 10.

MPSC also stated that, “[r]edefinition does not modify either the existing rules applicable to rural telephone companies for calculating costs on a study area basis or how they must comply with these rules.”³⁸ The MPSC concluded that TCS met the legal requirements for redefinition, including the administrative burden standard.³⁹

III. CONCLUSION

For the foregoing reasons, TCS respectfully requests FCC agreement with the MPSC’s redefinition of TTCA and CMC’s rural study areas to include each wire center that TCS serves in its entirety as a separate service area of the rural study areas of TTCA and CMC.

Respectfully submitted,

**TRIANGLE COMMUNICATION
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³⁸ See *Order* at 4, footnote 8.

³⁹ See *id.* at 42; see also *Final Order on Reconsideration* at 10.

Exhibit A

Service Date: May 31, 2007

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF TRIANGLE)	UTILITY DIVISION
COMMUNICATIONS SYSTEM, INC.,)	
Application for Designation as an)	DOCKET NO. D2004.1.6
Eligible Telecommunications Carrier)	ORDER NO. 6723a

FINAL ORDER DESIGNATING
ELIGIBLE TELECOMMUNICATIONS CARRIER

INTRODUCTION

On January 16, 2004, Triangle Communications System, Inc, (TCS or Tri-Com), filed with the Montana Public Service Commission (PSC) its initial petition for designation as an eligible telecommunications carrier (ETC).¹ TCS asserts that its designation will increase wireless access in rural service areas.² The areas for which TCS seeks ETC designation include certain of the Montana exchanges served by its affiliates Triangle Telephone Cooperative Association, Inc. (TTCA) and Central Montana Communications, Inc., (CMC). TCS asserts its designation will serve the public interest by providing customers a choice of communications providers and a choice of communications technologies. TCS also asserts it has a fiduciary responsibility to seek ETC designation in the identified exchanges.

TCS states to have satisfied all requirements for it to be designated as an ETC. These requirements include that as a common carrier it offer the services, using either its own facilities or a combination of its own facilities and resale of another carrier's services, that federal

¹ TCS amended its initial petition on two occasions, November 23, 2005, and January 20, 2006.

² Study area and service area are synonymous unless the study area is modified. DR MTA -002.

universal service fund (FUSF) mechanisms support.³ As a common carrier TCS will offer the services supported by FUSF support mechanisms. The nine supported services include access to voice-grade service, access to free-of-charge local usage (defined as an amount of minutes of use of exchange service), dual tone multi-frequency (DTMF) signaling or its equivalent, single-party service, toll limitation for qualifying low-income consumers, and access to emergency, operator, interexchange, and directory services.

TCS commits to meet additional requirements. TCS will advertise the availability of its services using media of general distribution. Customers in rural areas are to have access to telecommunication and information services that are reasonably comparable to those services provided in urban areas and at rates that are reasonably comparable to rates charged for similar services in urban areas. TCS commits to comply with the PSC's established public interest related technical and service quality standards. ETC designation will provide TCS the financial ability to continue to provide universal service offerings and will enhance its ability to contribute to public safety needs.

On February 13, 2004, TCS filed in conjunction with the Montana Independent Telecommunications Systems (MITS), a Motion to Stay or Suspend proceedings in this docket. TCS urged the PSC to expedite rules establishing minimum service quality standards applicable to ETC designations and certifications. On April 16, 2004, TCS filed a request to reactivate the schedule in this docket. On April 28, 2004, the PSC denied the petitions to Stay or Suspend.

On April 26, 2005, the PSC issued a Notice of Application and Intervention Deadline. On June 1, 2005, the PSC granted intervention to the following parties: Cable & Communications Corporation (CCC), Mid-Rivers Telephone Cooperative (MRTC), the Montana Consumer Counsel (MCC), the Montana Telecommunications Association (MTA), and 3 Rivers

³ TCS commits to use its own base stations, radio equipment, and antennas at tower locations and transmit its own radio signal. TCS deployed and will continue to deploy carrier grade equipment at its cell sites. Sagebrush Cellular Inc., (SCI) uses the same quality equipment in its switch (which TCS leases). The transport from TCS's towers to the switch is provided by TTCA, CMC, and Nemont Telephone Cooperative. TCS has roaming agreements, through SCI, with over 80 wireless carriers. DR PSC -005(a). TCS is not willing to use resale or roaming as a means to achieve 98% coverage. DR PSC -007(a).

PCS, Inc. On April 28, 2005, the PSC's ETC rules became effective. On July 12, 2005, 3 Rivers PCS submitted a Notice of Withdrawal as an Intervenor. On July 25, 2005, TCS filed Stipulations and Agreements it had reached, asserting each of CCC, MTA, and MRTTC stipulate and agree to not object to TCS' application as an ETC.

On November 23, 2005, TCS filed an amended petition for designation as an ETC. Whereas TCS's initial petition sought ETC designation for the entire study areas of TTCA and CMC, its amended petition asks the PSC to "redefine" the service area for both TTCA and CMC.⁴ The study areas would then represent the individual wire centers that fall within TCS's licensed cellular wireless service area.⁵

⁴ The Telecommunications Act of 1996 (the '96 Act) states unless and until the FCC and the states establish, after accounting for recommendations by a Federal-State Joint Board (FSJB), a different definition, a rural company's service area is its study area. Per §214(e)(5) of the '96 Act a state PSC, or the FCC, may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations. The FCC adopted rules to allow changes to an ILEC's service area. The FCC's rules provide the mechanism by which a state PSC may propose to redefine a rural ILEC's service area for purposes of determining universal service obligations and support. 47 C.F.R. §54.207(a),(c). The FCC has authority to propose a service area redefinition on its own motion under section §54.207(d), but such redefinition would not go into effect without the agreement of the relevant state PSC. §54.207(d).

Under section §54.207(c)(1), a state PSC or other party seeking the FCC's agreement in redefining a service area shall submit a petition to the FCC. The petition must contain: (1) the definition proposed by the PSC; and (2) the PSC's ruling or other official statement presenting the PSC's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. 47 C.F.R. §54.207(c)(1). Per §54.207(c)(3) the FCC may initiate a proceeding to consider a PSC's proposal to redefine the area served by a rural ILEC within 90 days of the release date of the public notice (that must issue within 14 days of receipt of any petition). 47 C.F.R. §54.207(c)(3). If the FCC initiates a proceeding to consider the petition, the proposed definition will not take effect until both the PSC and the FCC agree on the definition of a rural carrier service area, in accordance with §214(c)(5) of the Act. If the FCC does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the FCC and takes effect in accordance with state procedures. 47 C.F.R. §54.207(c)(3)(ii). TCS notes the procedural process that must occur if, and once, a PSC approves of its petition. DR PSC -009(a).

⁵ As TCS explained, its cellular license boundaries do not precisely match the wire center boundaries for which it seeks designation as an ETC. TCS estimates more than 98% of the

TCS's filing references three FCC orders: (1) March 17, 2005, Report and Order (CC 96-45, FCC 05-46, adopted February 25, 2005); (2) Highland Cellular; and (3) Virginia Cellular. TCS asserts these orders provide guidance on the procedures applicable to the redefinition of rural service areas. In its Virginia Cellular order, the Federal Communication Commission (FCC) determined when defining a service area other than the study area that it would: (1) consider minimizing cream skimming;⁶ (2) recognize that the Telecommunications Act of 1996 ('96 Act) places rural telephone companies on a different competitive footing than other local exchange carriers (LECs);⁷ and (3) recognize the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.⁸

customers in the redefined service area are in the licensed area. DR PSC -019(d),(e). TCS would like to offer affordable service ubiquitously in TTCA's and CMC's service areas, but it does not hold the 800 MHz licenses that cover those entire areas. Whereas it was able to purchase some licenses from Commnet Cellular, it was not able to negotiate the purchase of other licenses that Commnet held. It did acquire some licenses by serving unserved areas (the FCC requires build out within five years of receipt of a license or the licensed area becomes an "unserved area."). DR PSC -002(c). Commnet was acquired several times since the early 1990s and is now part of Gold Creek (d/b/a Verizon Wireless). Gold Creek Cellular still owns the licenses and offers services with those licenses. DR PSC -023(a) and DR PSC -024(e). As for whether Commnet's license is the only other option that TCS had the right to acquire, TCS explained that it could acquire the 800 MHz licenses by purchasing them. TCS witness Stevens, however, is unaware of a willing seller in either TTCA's or CMC's service areas and still, a business case must be made. Using a business case model, no case would justify the costs of extending services to the unserved areas. DR PSC -024(b).

⁶ Rural cream skimming occurs when competitors serve only the low-cost high revenue customers in a rural telephone company's study area. TCS asserts it is not cream skimming as it seeks to be designated within its "entire" FCC licensed cellular service area (see TCS's November 23, 2005, Amended Petition, p. 4/6, emphasis added).

⁷ TCS asserts that nothing would affect the regulatory treatment of either TTCA or CMC. The FCC has determined the redefinition of the study area does not affect the embedded costs of "the company" or the amount of universal service support that it receives (re: Virginia Cellular order, paras. 41 and 43).

⁸ TCS asserts the administrative ease of calculating costs on a less-than-study area level is not an issue because any FUSF support available to TCS is based on the per-line support available to the incumbent ETCs. The FCC determined, in the Virginia Cellular order, that redefining the

In its November 25, 2005, amended application TCS asserts it will demonstrate why a market area redefinition is in the public interest. The impact of TCS's amended filing is to limit the wire centers that would comprise the redefined study areas. For TTCA, the exchanges in the redefined study area include Chinook, Turner, Hays, Whitewater, South Malta, and Chester. In the case of CMC, the exchanges in the redefined study area include Harlem and Malta.⁹

On January 20, 2006, TCS filed a further amended petition in which it asks the PSC to redefine the service area for both TTCA and CMC to include individual wire centers that fall within TCS's licensed cellular wireless service area. TCS's further amended petition appends the testimony of TCS witness Richard Stevens. TCS also corrects the list of CMC wire centers identified for the proposed "redefined study area applicable to TCS" to add the CMC Dodson exchange. The TTCA exchanges in the "redefined" study area applicable to TCS remain as noted earlier. The list of CMC exchanges in the "redefined" study area applicable to TCS are amended to Harlem, Malta, and Dodson.¹⁰

On January 30, 2006, the PSC issued an Amended Notice of Application and Intervention establishing a March 2, 2006, deadline to file for intervention. Although a procedural schedule had not issued, the MCC submitted on February 14, 2006, data requests to TCS. On February 21, 2006, TCS filed objections to certain MCC data requests (DR MCC -008 and -009).

On March 7, 2006, the PSC issued a Notice of Staff Action (NSA) granting intervention

rural telephone company service areas will not require the rural telephone companies to determine their costs on a basis other than the study area level. Redefinition does not modify either the existing rules applicable to rural telephone companies for calculating costs on a study area basis or how they must comply with these rules.

⁹ As TCS explained, in order to meet its 98% coverage requirement if it is designated, it intends to serve the unserved areas at Cherry Ridge, Turner, Cleveland, and Savoy. Upon receiving ETC designation from the PSC, TCS will begin the process with the FCC to acquire a license to serve the areas needed to reach 98% penetration and which are currently considered unserved. DR PSC -006(b),(c). TCS acquired the 800 MHz licenses that cover Chester, Chinook, and Harlem by serving unserved areas. DR PSC -008(a).

¹⁰ TCS will not seek FUSFs for a customer who lives outside the redefined TCS licensed area. DR PSC -009(b).

to: 3 Rivers Telephone Cooperative (3RTC), CCC, MRTC, MCC, and MTA. On March 15, 2006, MRTC and CCC filed stipulations agreeing to the PSC's designation of TCS as an ETC.

On March 31, 2006, the PSC issued a Procedural Order (PSC Order No. 6723). On March 31, 2006, the PSC also issued a Notice of Commission Action (NCA) on TCS's objections to MCC's discovery. On April 13, 2006, TCS filed a Motion for Reconsideration (and brief) regarding the PSC's March 31, 2006 NCA. On May 22, 2006, MTA filed a notice of a change in counsel.

In a June 7, 2006, NSA (notice of staff action), the PSC amended the procedural schedule and set an August 10, 2006 hearing date. In a June 7, 2006, NCA, the PSC denied reconsideration of TCS's motion to reconsider the PSC's March 17, 2006, action that denied TCS's objections to certain MCC data requests. On May 30, 2006, the MCC filed the direct testimony of MCC witness Allen Buckalew.

Hearing commenced on Thursday, August 10, 2006, at 1:00 p.m., at the Harlem City Hall, Harlem, Montana. Initial and reply briefs were filed on September 29, 2006, and October 17, 2006, respectively.

TESTIMONY, ARGUMENTS, AND DISCUSSION

TCS Testimony

On January 20, 2006, TCS filed the initial direct testimony of TCS witness Richard Stevens. Stevens is the general manager of each of TCS, TCS's parent company TTCA and of CMC. Stevens reports to the Board of Directors for each entity. His testimony first provides background on TCS. TCS has been a subsidiary of TTCA since 1980. TCS operates its cellular network jointly with SCI (Sagebrush Cellular Inc.). TCS' mission (statement) is to provide access to reliable, high quality telecommunications services at competitive prices. TCS and its affiliates are committed to both customer satisfaction and enhancing their quality of life as well as educational development. TCS is deploying digital service overlays to its analog network in an effort to improve its service and that will comply with FCC requirements (*e.g.*, E911).¹¹

¹¹ TCS explained that its customers will not always have the ability to choose between analog

TCS's wireless competitors are Gold Creek Cellular and Alltel. SCI and TCS will not provide wireless service in the same geographic areas in Montana. TCS is not opposed to competition among wireless providers in the TTCA and CMC service areas and it does not hold the opinion that TTCA or CMC could only sustain one competitive ETC. TCS does not oppose, and nor should the PSC limit, competition among wireless carriers in TTCA's and CMC's service areas (see DR PSC -001). In the study areas of each of TTCA and CMC, Chinook Wireless is a third wireless competitor that provides service in the Fort Benton and Big Timber wire centers. DR PSC -008(d).

Stevens explains the nature of TCS's filing, listing the wire centers for which TCS seeks ETC designation. These wire centers comprise partial service areas of TCS's affiliates' entire study areas. Whereas TCS asserts to not cherry pick densely populated areas, it seeks to change the service area boundaries of "one or more" incumbent LECs (ILECs).¹² The only reason TCS did not seek disaggregation¹³ for TTCA's and CMC's entire service areas is that the particular configuration of TCS's network combine to make it more sensible for TCS to apply to serve areas that only include certain wire centers (p. 7). TCS's proposal only impinges on the FUSF support TCS receives and not the FUSF support TTCA and CMC receive. If the proposal impinged on the "manner" by which TTCA and CMC receive support, TCS would withdraw its

and digital services, as it must maintain and operate its analog sites until February 2008 and more likely until 2010 when its digital build-out is complete. DR PSC -010(a).

¹² TCS said "one or more" could be deleted from the testimony. DR PSC -006(e).

¹³ Stevens revised his testimony to replace "disaggregation" with "ETC designation." TCS was asked about the disaggregation options that TTCA and CMC now have. As its initial answers were not responsive TCS was asked again to respond to DR PSC -007(c), (d). TCS' revised response asserts rural ILECs (*e.g.*, TTCA, CMC) who chose not to select a "disaggregation" path by May 15, 2002, are not permitted to disaggregate unless ordered to do so by a state PSC. For TCS to be designated an ETC within an area that differs from the study area of the incumbent ETC, it must request a partial study area designation (citing §54.315 and §54.207, Title 47, C.F.R.). DR PSC -024(c). TCS has no current plans to seek to redefine the service areas of other ILECs. DR PSC -007(e) and DR PSC -014. TCS said disaggregation serves to minimize the risk of cream skimming, an idea that is irrelevant to this docket. DR MTA -009. TCS cannot now disaggregate without a PSC order to do so. DR PSC -024(c).

petition.¹⁴ Based upon the FCC's Virginia Cellular and Highland Cellular decisions, designating TCS will not impact the total amount of high-cost funding that TTCA or CMC receives.¹⁵ He adds these FCC decisions serve as guidelines and that whether the applicant is affiliated with the incumbent is irrelevant. DR MTA -006. Both ILECs will continue to have their costs determined based upon their respective entire study areas and not upon the area in TCS's application. Both TTCA's and CMC's service areas will change if this application is successful in that future applicants for ETC designation could request to serve only one or more of the wire centers in which TCS is proposing to provide universal service (p. 8, lines 5-9). Granting of TCS's application will impact future ETC applicants as they "may" apply for designation in the same wire centers for which TCS is designated an ETC (p. 10, line 1).¹⁶ TCS's petition is not a case of cream skimming as its redefinition petition excludes certain of the larger wire centers and includes some of the smaller wire centers (p. 10).¹⁷

¹⁴ This appears to refer to the decreased funding that either ILEC receives. DR PSC -013(c).

¹⁵ TCS said it was appropriate for it to receive the FUSF support for the redefined area when it is computed based upon the entire study area. TCS cites to the Virginia Cellular order wherein the FCC states, in part, to find that redefining the rural telephone company service areas will not require the rural companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. DR 3RTC -009.

¹⁶ As TCS clarified, approval of its petition to redefine the service areas would not limit the geographic service area where other wireless carriers compete. Another wireless carrier could petition for ETC status for: 1) either TTCA's or CMC's entire service areas; 2) TCS's service area; or 3) a different service area. The TCS application will not restrict the wire centers that other applicants must serve. DR PSC -002(d) and -003(b). If TCS's redefinition petition succeeds, any other carrier can request redefinition of an ILEC's study area for ETC designation purposes. DR MTA -008(c).

¹⁷ TCS explained (see fn. 6) its definition of cream skimming by reference to the FCC's Virginia Cellular Order. DR 3RTC -001. What distinguishes its redefined service area petition from the situation in the Highland Cellular decision is TCS has not targeted the low cost, high density parts of TTCA's and CMC's "service area." TCS adds the density for the redefined "area" is .71 access lines per square mile, compared to .8 for the combined study areas of TTCA and CMC. The population density of the redefined service area of 1.41 people per square mile is less than

Stevens emphasized TCS seeks ETC status so it can “ubiquitously” offer high quality wireless service in those select wire centers of TTCA and CMC study areas that fall within the TCS licensed (800 MHz) cellular area (pp. 10-11).¹⁸ With digital coverage, customers who own digital cellular phones that contain embedded GPS (Global Positioning System) capability are able to access wireless E911 where TCS has digital towers. TCS commits to add to the existing seven towers in the TTCA and CMC study areas in order to achieve 98% coverage.¹⁹ Once TCS achieves 98% coverage, it will serve only 31% and 35% respectively of TTCA’s and CMC’s “landline serving locations.” The redefined service area covers about 37% of the combined ILEC geographic study areas. DR PSC -009(d) and DR MTA -012(a). TCS did not know the number of households in each of TTCA’s and CMC’s study areas that it can serve. DR PSC -013(d).

The balance of Steven’s testimony is aligned to track the PSC’s rules for ETCs. For each rule he identifies the purpose, the scope and the specific means by how TCS intends to comply.

that for the combined study areas (of 3.14 people per square mile). DR 3RTC -002. The customer density (which correlates to costs) for the redefined service area is less than that for the ILECs’ combined service area. DR MTA -013. Because it cannot comply with the build-out requirements for the original ETC petition does not mean TCS is cream skimming. DR 3RTC -003. TCS notes when other PSCs have granted petitions to redefine service areas. DR 3RTC -005.

¹⁸ Based on its ability to provide reliable service TCS provides “excellent service quality.” TCS has no knowledge of whether it provides different service quality than is provided in urban areas. DR PSC -005(a).

TCS asserts FCC wireless licenses are to serve an entire county. TCS holds 700 MHz and/or 1900 MHz licenses within the following counties that are outside the proposed redefined study area, but either partially or entirely cover the existing TTCA and/or CMC study areas: Hill, Choteau, Judith Basin, Fergus, Meagher, Wheatland, Golden Valley, Sweet Grass, and Stillwater. TCS adds that wireless licenses follow county lines. DR PSC -006(d), DR PSC -024(b).

¹⁹ As for the 98% coverage threshold in the ILEC’s service areas versus the redefined areas, TCS was not a party to the Mid-Rivers Cellular ETC petition (PSC Docket No. D2003.8.105) and is not aware of the circumstances in that case. Because other wireless carriers (Gold Creek Cellular and Alltel) serve parts of the ILECs’ study areas, TCS will not be able to obtain licenses in this manner throughout the entire study areas in order to meet the PSC’s 98% coverage threshold. DR MTA -007(d). TCS asserts no other entities have “stepped forward to serve” the remote areas included in the redefined service area. DR MTA -008(b).

38.5.3201 A.R.M.: Stevens said this rule established the minimum operations, build-out, and public interest standards. In satisfaction of the rule TCS may, as a wireless common carrier, receive FUSF support so long as it offers the nine supported services and advertises the availability of such services using media of general distribution.

38.5.3203 A.R.M.: Stevens understands this rule to place responsibility on TCS to demonstrate satisfaction of the requirements and to establish a prima facie case for designation.

38.5.3206 A.R.M.: TCS understands the PSC may revoke an ETC designation. TCS intends to satisfy this rule by way of complying with 38.5.3209 A.R.M.

38.5.3209 A.R.M.: TCS's compliance with this rule is extensive and involves compliance with the following six minimum requirements. First, TCS will offer the nine services supported by FUSFs (p. 16).²⁰ TCS will offer voice-grade access to the PSTN that can satisfy the -104dBm signal strength standard; TCS "will be able" to provide service that spans the 300 to 3000Hz bandwidth range (p. 21).²¹ As for "local usage," TCS' rate plans are "...structured to include a level of usage covered by each of the individual plans." Plans include blocks of usage that the subscriber may use without incurring incremental charges. The "usage blocks" in the TCS/SCI plans will minimally match or generally exceed the "geographic area" covered by TTCA and CMC (p. 17).²² TCS will accomplish its DTMF signaling (or equivalent) obligation by an operating arrangement with SCI. Single party service is achieved in how the network is able to allocate spectrum to establish a dedicated path for the duration of a call. As for E911, TCS is Phase I capable as a commercial mobile radio service provider. The FCC granted TCS an

²⁰ These nine services were listed earlier. TCS compared its directory and operator service fees to those of the ILECs. DR PSC -019(c).

²¹ TCS corrected this testimony to state it is currently providing service that spans the 300 to 3000 Hertz range. DR PSC -010(a). The -104dBm metric is a reference to decibels per milliWatt.

²² TCS clarified, somewhat, that the usage block coverage is only with respect to the redefined area. DR PSC -010(c). TCS will not offer unlimited usage as does the incumbent LEC. DR PSC -010(d). TCS's rate plans do not vary with respect to whether the subscriber receives analog or digital service, or whether the service is fixed or mobile wireless. DR PSC -011(e).

extension of time to achieve the 95% GPS digital threshold (p. 18).²³ Access to operator, interexchange,²⁴ including equal access, and directory assistance services will be achieved by way of an operating arrangement with SCI. Toll limitation service for qualifying low-income consumers will be provided by means of prohibiting toll calls.

Second, Stevens commits TCS to advertise annually in the legal section of media of general distribution. Such advertisements will appear in newspapers in the counties of Philips, Blaine, and Liberty. TCS will also supply "brochures" to customers and provide information by means of the Internet.

Third, TCS commits to comply with the requirement that it provide the supported services, throughout the redefined service area(s), to all customers making a reasonable request for service, including low-income, low density, rural, insular, and high-cost customers. Services and service rates in rural areas will be reasonable comparable to similar services offered in urban areas.²⁵ Lifeline service, including Enhanced Lifeline, will be offered to qualifying subscribers under the terms and conditions of federal and Montana rules.²⁶ TCS will also extend and

²³ The FCC granted TCS an extension until June 2006 to reach the 95% penetration rate of location capable handsets and to become Phase II compliant. DR PSC -011(b). On July 10, 2006 the FCC released an Order that conditionally extended until June 30, 2007, the deadline to be Phase II compliant (CC 94-102). TCS said only a handful of PSAPs are Phase II capable. Upon receipt of a bona fide Phase II request from a PSAP TCS will have 180 days to provide by GPS automatic location identification (ALI) to the PSAP. DR PSC -015(a). TCS adds that it holds 800 MHz licenses in all or parts of Phillips, Blaine, and Liberty counties, adding that it has not received any request from a PSAP for E911 Phase II service. DR 3RTC -008.

²⁴ TCS said calls between a TCS customer and a landline customer in the same wire center or between two wire centers both of which are wire centers for which TCS seeks ETC designation would not be assessed toll charges. As TCS operates jointly with SCI it need not have interconnection agreements with any other providers. DR PSC -018. Calls between a TCS customer and a landline customer not in the same ILEC study area, or EAS region, would be assessed toll charges. DR PSC -019.

²⁵ TCS has not analyzed which areas are rural and which are urban. It proposes to use the ILEC's rates to determine if its rates are comparable to those offered in "urban" areas. DR PSC -011(c).

²⁶ TCS said the customer must decide whether to receive the Lifeline discount for their landline

increase coverage from the current 88.7% to 98% of potential subscribers within the redefined service areas within five years of its designation as an ETC (p. 20).²⁷

Fourth, TCS will comply with applicable consumer protection and service quality standards (see earlier discussion of the -104dBm and 300 to 3000 Hz bandwidth).

Fifth, TCS will demonstrate compliance with the requirement to offer a local usage plan comparable to that of the ILEC.²⁸ It will do so by "defining local usage in the same manner for the same local calling areas as that specified in the TTCA and CMC redefined service areas, at a minimum." TCS may define a broader geographic area for usage blocks which do not increase charges beyond a monthly flat rate in the service package that a customer selects (p. 21).

Sixth, Stevens will demonstrate by the initial and ongoing compliance with 38.5.3210 A.R.M that TCS's designation is in the public interest. He understands 38.5.3210 A.R.M to include minimally eleven considerations, or factors (pp. 22-23):

- (1) TCS has demonstrated its ability to provide the nine supported services.
- (2) TCS agrees to comply with all laws that govern ETCs and it understands that revocation of its designation is a consequence of not complying.
- (3) TCS said the TTCA and CMC service areas, as they would be redefined, can sustain

or their wireless account. DR PSC -016(a). TCS documented the number of Tier I through Tier IV Lifeline recipients of TTCA and CMC, noting Enhanced Lifeline recipients need only live on tribal lands and TCS will offer toll limitation with Lifeline service. DR PSC -016. TCS said 87% of TTCA's Lifeline recipients live on tribal lands (518 out of 593 recipients). TCS has no information on the penetration of wireline or wireless service on tribal lands. DR PSC 025(d),(e).

²⁷ TCS based the 88.7% coverage estimate on individual landline serving locations within the redefined "service areas." DR PSC -017(a). To achieve 98% coverage TCS commits to build seven new towers, making wireless voice access available to hundreds of Montanans. TCS will not rely on others' networks or use resale and roaming to achieve 98% coverage. TCS does not know the areas that other carriers serve, and advises the PSC to consult with the FCC. DR PSC -007(a). TCS identified the alternative wireless providers for each wire center in its licensed areas and it identified the alternative providers in the study areas of TTCA and CMC that are servicing wire centers not in TCS' ETC petition. DR PSC -008.

²⁸ Exhibit # 2 attached to his testimony lists SCI's wireless service plans.

one more ETC. As wireless is a complement to wireline service it is increasingly viewed as “essential” a service as is wireline service. Mobility will also enhance the public interest.

(4) Designating TCS as an ETC will have a minimal impact on “incumbent ETCs” in the TTC and CMC redefined service areas, as wireless is viewed as “complementary” to wireline service (p. 24).

(5) Designating TCS an ETC will also have a positive impact on the ability of TCS to offer broadband, advanced, and information services, especially to remote and isolated subscribers (p. 25). TCS does not offer any advanced data services to its wireless customers. DR PSC -026(a). While TCS’ network is configured to provide voice-grade access, SCI is trialing a text messaging service. DR PSC -010(b). He adds the “licensed spectrum” TCS will use is fully compatible with broadband service applications.²⁹ To achieve 98% coverage will require 14 tower locations in the TTCA/CMC “serving” area where TCS has licenses (p. 25) that, in turn, enable deployment of “fixed wireless” broadband using, perhaps, the 700 MHz spectrum (in a trial involving SCI).³⁰ TCS owns the 700 MHz licenses that cover the redefined service

²⁹ Although TCS mentions licensed spectrum and the application mentions the “licensed” area, no petition was ever made to the FCC for a license, as the FCC does not allow carriers to simply petition for the wireless spectrum in a carrier-defined area. TCS acquired licenses at FCC auctions and from other carriers. The FCC has not granted TCS a license specifically to serve the redefined service area. DR PSC -006(a),(b). When asked to explain what it meant by the statement that TCS wanted to create the most cohesive wireless area possible and not risk losing ETC status due to any failure on the part of another wireless carrier to meet the PSC’s coverage and service quality standards, TCS said it cannot certify to the PSC that it can comply with the ETC rules as it has no control over the service quality or coverage (e.g., -104dBm, 98%) of other wireless carriers. DR PSC -006(a) and DR PSC -024(a). If designated an ETC, TCS will begin the process at the FCC to obtain a license to serve the areas needed to attain 98% penetration, which will not involve acquiring licenses from other licensees. DR PSC -006(c). TCS has no plans to acquire licenses held by other carriers. DR PSC -007(b). TCS intends to use the FCC’s ongoing process that allows “eligible” parties to apply for a license in any unserved area. With this process, the FCC’s approval is automatic so long as the petitioned area does not overlap the area served by any existing licensed carrier using the same spectrum. DR PSC -008(a). TCS filed a map identifying its license areas. DR PSC -024(d).

³⁰ As the 700 MHz spectrum is only for data there is no E911 obligation. DR PSC -015(a). TCS provides no service using either the 700 or the 1900 MHz spectrum. DR PSC -014(a).

area (p. 25).

(6) In the event TTCA “and” CMC cease to provide equal access TCS will work with SCI to provide equal access (pp. 25-26).³¹

(7) TCS intends to use its own facilities to provide service in the redefined service areas.

(8) While the impact of TCSs’ designation is unknown the amount of funding will be “de minimis” given the overall size of the FUSF.³²

(9) Designating TCS as an ETC will clearly support and strengthen the seven universal service principles (p. 27).³³

(10) TCS’s designation will support the public convenience, safety, and mobility and provide choice (of wireless technology). Stevens asserts efficiency will improve for Public Safety Answering Points (PSAPs), as improved digital coverage reduces customers’ barriers for substituting analog bag phones for digital hand sets (p. 29).

³¹ TCS replaced the conjunction “and” with “or.” DR PSC -012(b).

³² TCS documents the FUSFs each of TTCA and CMC receive and estimates TCS will receive \$30 and \$38 respectively for each line served. The FUSFs in these two amounts include High Cost Loop, Safety Net Additive, Local Switching, and Interstate Common Line Support. DR PSC -013(a), (b) and DR PSC -025(c).

³³ TCS will offer quality services at rates comparable to the ILEC’s rates. Its designation will, for example, ensure that “all” regions of the nation have access to both advanced and information services. TCS was unclear about which advanced services it offers; it has no specific plans to offer broadband service over “the cellular network at this time” and has no immediate plans at this time to use VoIP to offer voice services over its cellular network. DR PSC -021.

The most remote and isolated customers in the TTCA and the CMC redefined service areas will have access to services comparable to those offered in urban areas. TCS will contribute to the FUSF. TTCA and CMC provide access of advanced services to schools, health care providers, local governments, and libraries and TCS’s designation will further help to support public convenience, safety and mobility requirements in rural areas (p. 28). As for “competitive neutrality,” because the industry is in a state of flux it is unknown if wireless will, in ten years, remain a complementary service (p. 28). Wireless can compete with wireline service however (p. 29). Although TCS’s testimony makes no mention of the principle of affordability, the principle is no less important than any other §254 principle. TCS asserts to have price plans starting at \$20/month and it will offer low income subscribers Lifeline service at significantly reduced rates. DR PSC -002(a),(b).

(11) TCS's network is designed, based upon battery power backup and portable generation, to be functional in emergencies.

38.5.3213 A.R.M.: TCS' commitment to achieve 98% coverage within five years can be achieved with existing and new towers (without having customers purchase hand-held digital phones having 3 watt amplification). Exhibit #1 to Steven's testimony represents areas for which TCS "currently owns wireless licenses" and the prospective build-out plans for the TTCA and CMC redefined service areas.³⁴ Exhibit # 1 implies TCS must extend power, provide transport and construct new towers (p. 30-31).³⁵ TCS recognizes that, unless technology changes, it may be challenged to achieve 98% coverage with just seven towers. The challenge stems from the geographic topography of the TTCA and CMC redefined service areas. Exhibit # 1 illustrates the extent to which TCS will use "its own facilities to provide wireless coverage in the redefined service areas of the incumbent carriers with both existing and new towers."³⁶ (P. 32).

38.5.3216 A.R.M.: TCS commits to comply with PSC reporting requirements and will

³⁴ TCS supplied a map like Exhibit # 1 but which shows TCS's total license area in Montana. DR MCC -001. TCS said that it uses the 800 MHz spectrum and intends to use the same for its continued build out. TCS also has 1900 MHz PCS licenses throughout the TTCA and CMC study areas that are not reflected in Exhibit # 3. TCS has no plans to build out using the 1900 MHz spectrum due to the weakness inherent in the frequency. The 1900 MHz PCS spectrum is not economically feasible due to the small coverage ("footprints") areas.

When asked if TCS's wireless licenses cover the "entire study area," it responded that there are three ways to become licensed: 1) purchase spectrum through an auction; 2) acquire another carrier's license; or 3) serve an unserved area. TCS acquired licenses to serve Chester, Chinook, and Harlem areas that were unserved as they are best suited to create a "contiguous wireless service area within which we can fill any holes in a cost effective manner." DR MCC -002. TCS identified Alltel and Gold Creek Cellular as the other wireless carriers who hold licenses in the areas not served by TCS on Exhibit #1. DR MCC -002. TCS does not believe the other PCS license holders currently provide service within the proposed redefined service areas. TCS claims to not know the identity of other potential wireless providers.

TCS' build-out plans to add towers is contingent on its ETC status. DR MCC -006.

³⁵ TCS appears to have no intention of requiring customers to obtain increased wattage wireless products. DR PSC -012(c). TCS will sell customers increased wattage wireless phones if available. DR PSC -025(b).

³⁶ The redefined service areas are not delineated on Exhibit # 1.

not need to comply by means of proprietary filings (pp. 33-34).³⁷

38.5.3218 A.R.M.: TCS explained its understanding of the annual certification process. TCS also explained in response to discovery how it accounts for profits. First, the profits stay with TCS. Second, the costs TTCA and CMC incur are not spread to, or recovered from, the rates of TCS, nor does the converse occur. Third, TCS takes issue with discovery that asks whether it needs FUSFs if it earns a profit. The difference between patronage and rate credits is that a rate credit is an instant rebate that reduces the current year's net income. Rate credits have the effect of reducing the patronage credit (allocation of year end margins) that would otherwise be allocated to members. DR PSC -022. TCS said "year end margins" for a co-op are analogous to profits for a "for profit" company. As TCS is not a co-op, it does not distribute patronage credits: the year-end profits remain a part of TCS's equity unless the TCS board of directors declares a dividend. Since 1993, no dividend has been declared. DR PSC -027. TCS provided on a per member basis the amounts TTCA paid in cash for general retirements of capital credits: \$71/2005, \$77/2004, \$47/2001 (zero in 2002 and 2003); FUSF contributions per access line by TTCA in those years: (\$13/2005, \$11/2004, \$9/2003, \$7/2002 and \$5/2001. DR MCC -008, DR MCC -009.

In its August 24, 2006, late filed exhibit (No. 1) TCS provided a density comparison (access lines per square mile) and asserts to request a redefined study area that includes wire centers from both TTCA and CMC. The following data is from the late filed exhibit:³⁸

³⁷ These include filing of: build-out plans at 6 month intervals; maps of actual signal coverage within 60 days of a final order; quarterly reports on the number of unsatisfied service requests (by location) with an explanation for each unfulfilled request; quarterly reports on customer complaints; quarterly reports on FUSF receipts including for Lifeline (Enhanced and other), and Link Up and copies of active rate plans.

³⁸ On September 1, 2006, MTA filed an objection to the late filed exhibit holding the exhibit footnotes contained interpretation and arguments not subject to discovery nor cross examination. On September 14, 2006, TCS responded to the objection, holding the information in footnotes is already record evidence and asking the PSC to overrule. The PSC discusses and overrules the objection later in this order.

Density Comparison by Study Areas:

	<u>CMC</u>	<u>TTCA</u>	<u>COMBINED</u>
Within ILEC Study Areas:	1.526	.596	.803
Within Redefined Study Area:	4.177	.424	.713
Outside 800 MHz Licensed Area:	1.137	.731	.856
Within 1900 MHz License Area:	1.526	.594	.812
Outside 1900 MHz License Area:	NA	.622	.622

MCC Testimony

On May 30, 2006, the MCC filed the direct testimony of its witness Allen Buckalew. Buckalew presents his analysis of TCS's ETC designation request. In summary, he finds TCS should not be designated an ETC. After describing the federal universal service support mechanism he explains the TCS request deficiencies.

Buckalew recites parts of the '96 Act that bear on universal service. The principal of universal service is to make available to "all" consumers of the nation quality services, including advanced services, at affordable rates. The provision of these services in Montana's rural areas is subsidized by "all" telecommunications users through the FUSF (p. 4). "All telecommunications consumers" contribute to the FUSF through higher rates (p. 5). If a carrier wanting a subsidy demonstrates compliance with the standards, it may be an ETC (see p. 5 and DR PSC -028(a)).

As for why ETCs are needed, Buckalew asserts an ETC agrees to serve any customer, generally in the existing ILEC's study areas. For serving all customers it, in turn, receives FUSFs to subsidize below cost rates (p. 5).³⁹ He lists the nine services an ETC must provide (47 C.F.R. §54.101(a)): voice-grade access to the PSTN, local usage, dual tone multi-frequency (DTMF) signaling or an equivalent, single-party service (or an equivalent), access to each of

³⁹ It matters how the customer gets the benefits of FUSFs. Customers needing financial assistance can receive it through Lifeline and Link Up programs. Using USF funds to lower rates is appropriate if rates are high and subscriber penetration is low. The more appropriate long-term use of FUSFs should be to offset communications plant costs. For example, providing a dollar subsidy lowers rates for a month, but using FUSFs to subsidize plant lowers rates for the life of the plant. DR PSC -028(b).

emergency, operator interexchange and directory services and toll limitation for qualifying low-income consumers (pp. 5-6). Pursuant to the '96 Act, the PSC must, on its own motion or upon request, designate a common carrier who meets the requirements of §214(e) for a service area that the PSC designates. The PSC shall also permit a carrier to relinquish its ETC designation in an area served by more than one eligible carrier (p. 6, lines 11-14).

Buckalew testified that because the PSC has already designated "...the existing ILEC..." as an ETC, with only one carrier there may be no competition in certain areas for high cost customers. In turn, there are no market forces to drive down costs. "Alternatives to the LEC, that is, viable CLECs and wireless carriers need to exist in each exchange area for competition to work for all Montanans" (p. 6). While it is believed that wireless carriers increase the competitive choices in the market, wireless is not a substitute for wireline services. Wireless carriers do not really offer competitive products in the same product market (p. 7). Although the FCC finds wireless carriers must be considered for ETC status, granting such status is a PSC decision (p. 7). To do so, TCS' application must be in the public interest.⁴⁰ TCS has failed to demonstrate its application is in the public interest. Once TCS shows it is in the public interest, and it agrees to conditions that apply to all ETCs, it should be given ETC status.

Buckalew explained what TCS must agree to in order to both achieve and to continue its ETC status (pp. 7-9). First, it must be willing, able, and must certify its commitment, to provide the defined services supported by FUSFs to "any" customer location in the designated area. Second, TCS must show it advertises both the availability of services and its service charges. Third, it must provide universal service at a rate not more than the PSC-authorized maximum stand-alone rates⁴¹ for the defined basic local exchange service and must meet all service quality and provision rules established by the PSC for universal service (p. 8, lines 7-11). Fourth, it

⁴⁰ The PSC's ETC rules are binding and must be met. DR PSC -028(c).

⁴¹ TCS must offer service comparable to the co-op's and at the same rate the co-op charges or a lower flat rate. DR PSC -029(c). TCS provided the prices for flat-rated monthly local service for each of TTCA (residential is \$18 and business is \$35.5) and CMC (residential is \$20.50 and business is \$44.5). DR MCC -007. The local calling areas with EAS for TTCA and CMC are comparable to TCS's local calling area (see TCS Exhibit # 4 and # 5). DR MCC -010.

must satisfy its obligation to provide universal service over its own facilities or a combination of its own facilities and resale of another carrier's services over the entire service area. Although TCS is unwilling to use resale or the facilities of others to serve the entire study area (DR PSC - 007(a), DR MTA -003(b)), it may satisfy its obligation to provide the defined services, in part, through the lease of UNEs. Since it will not serve every customer, it is not entitled to FUSF support. Likewise, a carrier such as TCS, who leases local facilities from its parent or an affiliate company, should not be certified as (p. 8, lines 12-14).⁴² Finally, TCS must show why the provision of its services as an ETC is in the public interest.

Buckalew concludes TCSS' application is not in the public interest. He lists five deficiencies (pp. 9-12). His overarching concern is TCS seeks designation in less than the "study area."⁴³ First, TCS has not demonstrated the public interest is served by serving a smaller area than the study area. The PSC will not, for example, know the "costs and benefits" of serving an area different than the current study area.⁴⁴ Second, TCS must document that each line it serves is a new and not a currently-served line of the existing ETC. Alternatively, it must demonstrate that the customer is a former ETC customer that does not use ETC services (p. 9, lines 15-20). When the wireline and the wireless services are provided by the same company, as is the case, he sees no reason why the company should get ETC status for both its wireline and wireless operations in the same area. Tapping the FUSF pool twice is not good public policy and it is not in the public interest. Third, TCS must have on file with the PSC, so long as the market is less than workably competitive, the exact rates it wants to offer for the services included in its

⁴² Leasing from an affiliate provides no additional competitive force. DR PSC -029(e).

⁴³ As TCS has not justified the change in its study areas the applications are not in the public interest as TCS is selectively serving only the areas where it is licensed. However, he recognizes that TCS cannot serve all customers in the study area due to the lack of facilities and/or license to do so. He adds no cost method was presented in regard to the disaggregation option to support changing the study area. DR PSC -029(a),(b).

⁴⁴ This involves all costs and benefits of serving an area smaller than the study. DR PSC -030(a).

universal service offerings.⁴⁵ TCS should submit plans for advertising. TCS has nothing to show that it has complied as there is no comparable universal service offering that TCS provides (p. 10, lines 7-13). Fourth, until the PSC determines the “ETC area” is competitive, TCS must submit its rates for PSC approval (p. 10, lines 14-21). The rates must be less than or equal to the PSC established rate for unlimited local exchange service and lifeline service by the existing ETC. Such rates are the maximum rates that TCS may charge an end user for “basic” service or the supported basic local exchange telecommunications service. He concludes TCS’ rates are higher than the wireline company rates. Fifth, TCS must establish Lifeline and Link Up programs for low-income subscribers and it must file its rates prior to being designated an ETC (p. 11, lines 4-11).⁴⁶

Due to deficiencies in its application Buckalew testified it is not in the public interest to designate TCS as an ETC (pp. 11-12). He adds there is evidence that it is not in the public interest to designate TCS as an ETC. To approve of two ETCs in the same area under the same corporate umbrella is not in the public interest. He asks who it is TCS competes with. TCS’s cellular rates are “much higher” than the wireline company’s rates. Customers needing subsidized service should not force other consumers to pay for higher cost service that serve the same purpose (p. 12, lines 2-4).⁴⁷ As TCS will only serve 20% of the existing study area, it is not in the public interest to allow it to only serve the higher density areas (p. 12, lines 5-10).⁴⁸

⁴⁵ A workably competitive market is one for which the market share for local exchange service for the ILEC and the study area has declined to less than 30%. DR PSC -030(c).

⁴⁶ The MCC is not aware of any Lifeline and Link Up rates presented by TCS and adds anything TCS will do is speculative. DR PSC -031(a).

⁴⁷ He recognizes wireless is not a substitute for wireline service. Thus, wireless carriers, because of the FCC’s decisions, must be allowed into the market, even though the market does not consider the service to be a substitute at this time. DR PSC -031(b).

⁴⁸ TCS provided the population and density of the current and the proposed study area by county. DR MCC -004. The proposed study area counties (Blaine, Liberty, and Phillips) have a population density of 1.41 per square mile. The current combined study area has a density of 3.14 per square mile. TCS said the redefined service areas are not more densely populated and

Buckalew testified TCS has shown no willingness to cooperate with the PSC. For example, MCC asked TCS to provide the annual dividend or cash payment, the so-called "patronage credit," made to Triangle's cooperative members.⁴⁹ He asserts it is not in the public interest to have as low of rates as "Triangle" has while at the same time it collects a subsidy and pays customers to take telephone service (p. 12, lines 13-20). He is concerned with a collapsing FUSF system that endangers customers in need of a subsidy. In 2005, "Triangle Cooperatives residential customers" paid local rates of \$18/month and received a \$71/year payment for taking TCS services (p. 13). Thus, Triangle uses the FUSF system to keep rates low, which promotes universal service. But, it demonstrates the lack of need to subsidize its cellular carrier operations to promote universal service. The cooperative has capital already available for its expansion.

Buckalew asserts TCS demonstrates a lack of cooperation or a misunderstanding of the rules. DR 3RTC -010. Whereas TCS claims no "carrier of last resort" obligations, §214(e)(4) provides such an obligation.⁵⁰

TCS Initial Brief

TCS states in its September 29, 2006, opening brief to seek two forms of relief. First, TCS seeks to create a redefined service area consisting of certain TTCA and CMC exchanges, for which jurisdiction is jointly shared between the PSC and the FCC. Second, TCS seeks to obtain ETC designation in the redefined service area. TCS asserts to not cream skim with its proposal to serve the high cost customers. TCS asserts redefinition will not adversely affect the ILECs' "regulatory status," nor will it impose an administrative burden on ILECs. The ILECs' per line FUSF will not decrease with TCS's designation. TCS adds the redefinition of service areas is

therefore are not lower cost. DR MTA -011(b).

⁴⁹ He does not mention Central Montana as he has no data for it. DR PSC -031(c). The actual numbers are apparently illustrated in response to MCC -008, and -009 and PSC -031(a),(d).

⁵⁰ TCS asserts to be unaware of any carrier of last resort obligations applicable to Montana carriers. TCS reinterprets the question to accommodate any intended reference to §214(e)(1)(A) and 47 C.F.R. 54.101, adding it provides the nine supported services. DR 3RTC -010.

commonplace, noting eight precedent-setting cases. TCS understands the PSC's approval of the redefinition request will still require FCC approval. TCS asserts its designation will provide consumers with public safety access that is otherwise not likely available. TCS asserts its application meets all the requirements of all applicable state and federal statutes and rules.

MCC Initial Brief

In its September 29, 2006, initial brief, MCC first summarizes the testimonies of TCS's witness Stevens and the MCC's witness Buckalew. Buckalew held ETCs are important as they serve customers that may not otherwise receive service. Alternatives to the ILEC are important in each exchange area for competition to work. TCS noted to compete against other wireless carriers. He testified TCS has not shown a willingness to cooperate with the PSC, adding it has not shown its filing is in the public interest.

In its argument, the MCC makes two points. First, TCS does not appear to be a facilities-based carrier as it only identified a single tower, of the seven it believed it owns. In this regard, MCC asserts the FCC rules provide as one public interest criteria for ETC designation the extent to which an ETC provides service using the ETC's own network. MCC cites to the FCC's rules and states an ETC may provide service using its own facilities or a combination of its own facilities and resale. §54.201(d)(1), (e) and (f). MCC concludes it "does not appear that owning one tower, but no transport or switching facilities, makes Tri-Com eligible to receive high cost USF support."

Second, the MCC asserts TCS's designation is not in the public interest. As Buckalew testified, the purpose of the FUSF is to increase the number of customers on the system. MCC cites to Stevens's testimony admitting TCS's service is a complement to landline service. A complementary service does not advance or promote competition that might force others to lower their rates.⁵¹ It does strain the FUSF for no good reason. MCC finds no public interest in TCS charging its members \$18/month while paying them \$71 in patronage credits (2005). Nor is

⁵¹ MCC notes the Nebraska PSC's denial of an ETC application because it did not appear to lead to increased competition. MCC Initial Brief, p. 9.

TCS's disaggregation in the public interest. Also, in order to pass the public interest test, TCS must have Lifeline and Link Up programs for low-income subscribers.

MTA Initial Brief

MTA's September 29, 2006, opening brief first reviews the procedural history and factual background and concludes TCS's amended petition (as last amended January 20, 2006) fails to "...accurately state TCS' licensure from the FCC."⁵² MTA's concern is with allowing an ETC to "pick and choose" the part of a service area it will serve but then allowing the same carrier to receive FUSFs for that "self-selected" small part of a study area. MTA asserts TCS's own assessment reveals the redefined areas are the most profitable to serve. TCS is "...only marginally, at best, a facilities based telecommunications provider," owning only one tower and no other facilities. MTA asserts TCS seeks to serve only that part of TTCA's and CMC's study areas in which it has 800 MHz licenses, even though TCS asserts to own licenses for the entire study areas. Because the "network is owned by several affiliated companies," multiple companies may receive FUSFs for the same facilities and resources. MTA adds it is unclear the extent to which the service area SCI is obligated to serve overlaps with the areas TCS proposes to serve. MTA asks: would TCS and SCI receive USF support for essentially the same facility?

As for the legal standard, MTA asserts TCS has the burden of proof. Citing to §214(e), MTA notes the process by which a carrier may seek designation in a redefined service area, involving both the FCC and a state PSC. MTA adds the PSC must evaluate a redefinition petition taking into account the three Federal-State Joint Board factors: (1) whether the applicant is attempting to cream skim; (2) the unique situation of the rural carrier; and (3) whether redefinition will add administrative burdens on the rural ILEC by having to compute costs on

⁵² MTA also submitted on September 22, 2006, its reply brief in support of objections to TCS's extra-record evidence. MTA's reply brief addressed the PSC's late filed exhibit requests, one of which was to compare population densities. In this reply brief, MTA asserts that whereas TCS submitted population densities the footnotes (iii through v) presented new evidence and arguments not requested which should be rejected and excluded from the record. The PSC discusses and overrules MTA's objection later in this order.

other than a study area basis. The PSC must also decide if a request is in the public interest.

MTA argues TCS's redefinition application constitutes cream skimming and should be rejected. MTA adds this case is the first redefinition petition for the Montana PSC. MTA also asserts the question of granting a petition for redefinition where the petitioning carrier is an affiliate of the ILEC is a "matter of first impression." MTA advises the PSC to weigh carefully the standards it imposes and the long term effects of setting in place a mechanism by which the incoming carriers may petition to redefine an ILEC's study area.

MTA asserts TCS seeks only to serve the lowest cost areas of TTCA's and CMC's study areas and is not basing its request on its "ability to serve." Thus, the request to redefine should be denied. As TCS based its selected areas on support levels and the cost to serve, it is cream skimming. MTA asserts the FCC has held that population density can be a useful guide to determine cream skimming effects because density correlates with cost -- a low population density indicates high cost. The FCC applies cream skimming analysis to prevent a carrier from serving an area that makes the most business sense (p. 14). The FCC also considers whether an ILEC has disaggregated its study areas (p. 15). The FCC has left it to state PSCs to rigorously analyze an applicant's petition. The FCC rejected any "bright line" test to determine if cream skimming concerns exist (p. 16). MTA asserts the question of population density is a "red herring" adding that TCS has not done a population density analysis. Nor is population density the only measure of whether an applicant is cream skimming. It is not just the intent to cream skim, but whether an application has the "effect" of cream skimming. TCS's proposal has the effect of cream skimming in CMC's study area (p. 12). MTA adds "in a rural area, it is the degree of disparity among the proposed service areas that constitutes cream skimming" (p. 13). MTA further adds that TCS seeks to avoid any obligation to serve higher cost areas which it is able to serve. To serve only the 800 MHz spectrum and not the 1900 MHz licensed areas is cream skimming.

In its legal argument, MTA also asserts TCS and SCI operate as one network, adding that TCS is not offering a competitive service nor competing with the ILECs (p. 17). TCS attempts to avoid developing its own network or to incur any costs to build out a network. TCS owns no

switches, has no transport facilities, and neither manages nor operates the network. TCS markets its services as SCI's, who also bills for TCS. As the PSC has no public interest test for redefinition petitions, this application is an issue of first impression requiring the PSC to engage in a rigorous analysis. MTA notes the federal law (§214(e)(1)(a)) and rules that disallow a carrier from being designated an ETC while offering service entirely through another carrier's facilities.⁵³

3RTC Initial Brief

3RTC filed its initial post-hearing memorandum on September 29, 2006. 3RTC first notes that two years after its initial filing TCS amended its application, seeking "redesignation of its service area." With its proposal, TCS would be eligible to receive FUSFs for a "self-selected" part of its service area. TCS's self-selected redefinition, the first in Montana, is a matter "of first impression" in Montana and should be of utmost concern to the PSC. 3RTC's interest is in avoiding deliberate or inadvertent cream skimming in TCS's application or under future applications. The PSC should not allow the "woefully inadequate" evidence submitted by TCS to become the standard for redesignations.

3RTC asserts TCS has demonstrated it should "not" be allowed to redefine its service area. Before the PSC approves the TCS redefined service area application it must find cream skimming will not result and approval must be in the public interest. 3RTC does not believe the PSC can make such findings due to the complete lack of substantive and independent analyses to support TCS's application. TCS failed to carry its burden of proof. Based on each state's population density, an analysis of cream skimming for Montana is different than for Virginia. Contrary to the Chair's assertion at hearing, TCS has not demonstrated it is not cream skimming. Instead, TCS is "gaming" the FUSF system. TCS redefinition is not seeking to advance the cause of universal service or it would not leave behind unserved areas. Nor is TCS's petition mundane as TCS would like the PSC to believe. TCS has failed to provide any cost analysis,

⁵³ Per the rule facilities are: "any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to

population density analysis or a topographical study.

3RTC asserts TCS is a virtual operation and it appears to be a “paper company” because it owns no facilities for billing, sales, or transport and has no switches, customers, or identity. 3RTC also asserts the PSC staff was previously concerned that an ETC applicant provide service over owned facilities. 3RTC asserts TCS’s ownership of but one tower “seems to cement” its virtual existence. As TCS has for practical purposes, “no capital outlay,” it should not be eligible for FUSFs. Approval of TCS’s application will detrimentally affect rural Montanans.

TCS Response Brief

On October 17, 2006, TCS filed its reply brief. TCS concurs with the assessment of its opponents who assert this case will set a precedent in Montana. This case is about a template that will provide a mechanism by which new services are made available in areas that would not otherwise have such services. Approval of its application will result in cellular services being deployed for the first time in some of the most remote areas of Montana.

TCS seeks two forms of relief in its petition. First, TCS seeks to redefine the study areas of two ILECs. TCS has applied the analysis the FCC recommends. The only precedent is any future entity would have to go through the same analysis. Second, TCS seeks relief in the form of an ETC designation. TCS commits to comply with PSC precedent by building out to 98% of customer locations with at least -104dBm within five years. TCS argues redefinition of the ILEC’s areas and designating TCS as an ETC constitutes an important precedent that enables rural Montanans to join urban Montanans in having access to at least one wireless provider. TCS finds 3RTC’s and MTA’s assertions, that the relief it seeks would be disastrous, to be overly dramatic ones TCS would have liked an opportunity to explore. However, neither party filed testimony nor presented a witness at hearing. TCS seeks only to provide mobile service where it has an 800 MHz license. TCS asserts to have met its burden of proof.

TCS next addresses an initial comment holding it is not a facilities-based carrier, but is some sort of “paper” or “virtual” carrier. These comments are not accurate nor supported by the

subpart B of this part. §54.201(3).

facts. First, TCS' service is branded under SCI's name for reasons of scale efficiencies. TCS does not serve any area in Montana that SCI serves. SCI and TCS cannot receive FUSFs for the same customers. Second, as for facilities ownership, TCS testified it owns the wireless radio, battery, and transmitter facilities. All the assets associated with new construction will be owned by TCS. TCS said it is common for carriers to lease part of their network and notes that leasing differs from retail resale. Absent FUSFs residents of the rural areas will wait many years to obtain service.

TCS responds to those comments in initial briefs holding it must provide service anywhere it has a license. TCS asserts there is no legal precedent requiring a provider who redefines its service area to be prepared to build out every geographic location for which it has licensed wireless spectrum. Nor did the opponents cite to any FCC decision or rule imposing such a requirement. TCS asserts the record shows its redefinition proposal examined its current 800 MHz network and unserved areas "proximate" to its network. If FUSFs enabled TCS to make a business case for developing unserved areas, it would then extend service.

TCS addressed the allegations of cream skimming. TCS admits to act in its economic self interest when it selected the redefined areas in its proposal. It redefined the study areas to, in part, avoid losing money. TCS adds it is not cream skimming for two reasons. First, it selected the redefined area by looking at its existing network in conjunction with where it either had or could obtain 800 MHz licenses by building out areas. Second, TCS provided proof it is not seeking to provide service to low-cost areas while leaving out high-cost areas.

TCS addressed MTA's assertion that it should be required to build out its licenses for an entirely different spectrum. In response, TCS cites to the FCC's Virginia Cellular proceeding and the FCC's three reasons for not finding cream skimming: 1) Virginia Cellular committed to provide universal service throughout its licensed territory; 2) it analyzed relevant population densities that Virginia Cellular could and could not serve; and 3) the FCC did not propose redefinition in areas where ETC designation would undermine the ILEC's ability to serve its entire study area. TCS commits to serve areas where it is, and may be, licensed to use the 800 MHz spectrum. TCS wishes it could offer 800 MHz service ubiquitously in each ILEC's study

area. The public interest is not served by denying consumers residing within TCS's proposed redefined service area access to wireless service. Nor will its designation undermine each ILEC's continued ability to serve its entire study area. TCS denies having intentions to game the system.

TCS finds incomprehensible allegations that it will not properly price its universal service offering. Its plans start at \$20/month. TCS's Skyline plan is similar to the ILEC rates and allows for unlimited calling (scope) in the entire SCI and Havre EAS areas, and for a monthly rate of \$39.50, compared to TTCA's rate of \$24.50 and CMC's of \$28.00. TCS "intends to offer appropriate services to Lifeline customers," including Tiers 1, 2, 3, and 4 to qualifying low income subscribers.

TCS next addressed assertions included within MCC's concerns. TCS rebuts assertions that it has not adequately stated how it would advertise its universal service "offering." TCS commits to advertise annually in the legal section of media of general distribution, including newspapers, all done through an administrative agreement with SCI.

TCS concludes its reply comments by criticizing MTA and 3RTC for not having actually participated in the construction of a record. TCS understands MTA's financial motivation for opposing the designation of wireless ETCs. TCS agrees, this is a landmark case that sets an important precedent in Montana. On October 19, 2006, TCS filed replacement pages for its October 17, 2006 filing.

MCC Response Brief

MCC filed its response brief on October 17, 2006. MCC restates two general issues, whether TCS should be designated an ETC and whether the study areas of TTCA and CMC should be redefined. If TCS's ETC designation is not in the public interest, the second issue is moot. MCC asserts TCS's brief largely paraphrases Steven's testimony. MCC also asserts TCS has yet to explain why redefinition is in the public interest. MCC adds designation of TCS is not in the public interest and would not further the goals of universal service. If designated, TCS would receive subsidies when no new customer is added to the "system." MCC asserts TCS has

yet to offer Lifeline and Linkup services, nor is it in the public interest to designate the two affiliated providers. MCC agrees with 3RTC that TCS is a virtual provider and should not receive ETC status.

MCC also asserts TCS's redefinition request should be denied as it has the effect of cream skimming. The TCS redefinition is, by definition, cream skimming. MCC adds the cases TCS cites as precedent are not necessarily helpful. Not one case involved "carving up" an affiliates study area. No competitive benefits will result from the redefinition. Designating TCS will burden the FUSF with no public benefit.

MTA Response Brief

MTA's October 17, 2006, reply brief contains factual background material, a legal standard, its argument, and a conclusion. MTA asks the PSC to reject TCS's petition for ETC designation in a redefined service area within the study areas of TTCA and CMC. First, MTA asserts TCS offered no facts that support redefining its wireline affiliates' study areas. TCS does not dispute it is a virtual operator with phantom customers. The TCS arguments about population density do not separate CMC's and TTCA's study areas and TCS did not submit a population density analysis to support its application. It is not true CMC's study area has a higher density than the redefined area for CMC. Nor is there cost information to correlate with density information. MTA asserts the dearth of facts presented by TCS, the party with the burden of proof, must inure to the detriment of TCS. As the record evidence indicates, TCS is cream skimming, and the PSC must reject TCS's ETC application.

As for the legal standard, MTA holds the PSC must evaluate whether TCS is attempting to cream skim, account for the unique situation of rural carriers, analyze if redefinition adds burdens upon the ILECs, and determine if granting the petition is in the public interest.

As for legal arguments, MTA recommends rejecting TCS's filing. TCS has only provided the PSC with "virtual allegations" and no real facts to support its application. As there is no "bright line" definition of cream skimming, the PSC must rigorously analyze whether TCS's attempt to serve select areas is purely profit driven, suggested by TCS's stated intent to serve

only the low cost, high profit exchanges. MTA asserts TCSs' application has the effect of cream skimming, as TCS would be allowed to serve a part of the ILEC study areas without any regard to the areas it acknowledged might never be served. Based on population density the TCS application for CMC's study area must be rejected. Nothing in TCSs' cream skimming approach comports with the principles of universal service and by TCS's own definition its application will result in cream skimming. MTA holds TCS's designation as an ETC is exactly the type of application that burdens and has caused a crisis for the FUSF system.

MTA also asserts that the cases TCS cites in its opening brief do not support its application for redefinition. The two North Dakota cases (PU-05-653 and UP-1226-03-597) are not controlling, as the redefined areas were the entire licensed areas. The Wisconsin case is not controlling, as it involved offering service in an adjacent exchange. The Oregon case is not controlling, as the cost and population density evidence suggested no cream skimming. The Kentucky case is not controlling, as the petitioner used its own facilities and was aggressively upgrading its network. On the other hand, the Alaska case is relevant, as the decision was based on a weighing of all relevant factors. Since TCS's application is contrary to the principles of universal service it should be denied.

3RTC Response Brief

3RTC's October 17, 2006, reply brief raised several points. First, 3RTC is not surprised by TCS's observation that neither TTCA nor CMC opposed TCS's proposed redefinition of their service areas. 3RTC fears the PSC's decision on TCS's petition could open the flood gates for subsequent service area "malformation" proposals, especially if TCS's low-quality evidentiary case presented to the PSC becomes a precedent. Missing was any cost analysis, population density analysis, or use of the 1900 MHz licenses. Second, the "familial" affiliation between TCS, TTCA, and CMC is why there were no administrative burdens. The motivation behind TCS's application was to create a good business plan, and not for universal service reasons. Third, 3RTC finds illogical TCS's contention that if its petition is granted, subscribers will have access to wireless voice and emergency response services they do not now get. 3RTC responded

that if the PSC grants TCS' redefinition request, thousands of customers will have to wait for, or may never receive, wireless voice and emergency response services because the PSC adopted a low evidentiary precedent in this case.

Because of the deficient record of substantive evidence and absent a meaningful, in-depth analysis and for other reasons noted in its initial brief, 3RTC recommends denial of TCS's petition for redefinition and ETC designation.

MTA Objection to TCS Late-Filed Exhibit

At hearing the PSC directed TCS to submit a late-filed exhibit comparing access-line density of the study areas of TTCA and CMC in regard to several TCS proposed service area and service area capability aspects. On August 24, 2006, TCS filed that exhibit in access lines per square mile for TTCA, CMC, the TCS proposed redefined study area, TCS 800 MHZ licenses, and TCS 1900 MHZ licenses. The exhibit included five footnotes, three of which are narrative explaining the data and including TCS's observations regarding the data.

On September 1, 2006, MTA filed an objection to the footnotes, based on the footnotes containing pre-briefing argument and interpretation and referencing facts that are not subject to discovery. On September 14, 2007, TCS filed a response, arguing the footnotes are simply explanatory information that might be helpful in understanding the data and is information that is already of record through other lawful means. On September 22, 2007, MTA filed a reply, affirming its position that TCS has taken unlawful advantage of the late-filed exhibit process.

The PSC overrules the MTA objection. The footnotes will do what both TCS and MTA suggest -- explain the data that they accompany, if explanation is necessary. The footnotes are not necessary to explain the data to the PSC and are most probably not necessary to explain the data to the parties. The footnotes do not serve as a basis for any finding of fact or conclusion of law in this order.

FINDINGS OF FACT

Preliminaries

All introductory materials, summaries of testimony and arguments, and discussion above that can properly be considered findings of fact and which should be considered as such to preserve the integrity of this order are incorporated herein as findings of fact.

The two main issue areas include whether to redefine each of TTCA's and CMC's study areas and whether to designate TCS as an ETC in the redefined area. The issues are not entirely separable.

Redefinition of TTCA's and CMC's Study Areas

The PSC finds merit in approving TCS's proposal to redefine the service area of each of TTCA and CMC. Redefinition is permitted by both statute and rule. The FCC has approved of redefined service areas. Neither the law nor the rules carve out and preclude circumstances involving affiliates of ILECs. The PSC finds, based on measures of density, that cream skimming is not likely. The PSC's finding of merit is not without concern, but its concerns do not outweigh the expected benefits of designating TCS as an ETC in the redefined study areas.

Both the law and rules permit the redefinition of service areas. Section 214(e)(5) of the '96 Act permits a rural carrier's service (study) area to be redefined if, after taking into account for Federal-State Joint Board recommendations, the FCC and the state PSC establish a different service area.⁵⁴ The FCC's rules appear to, in part, restate the law (§54.207(a), (b)) and in other ways the rules appear to clarify the law (§54.207(c)). Where the FCC appears absolutely unbending is in granting redefinition requests if the result would be that the ETC would serve an area less than the wire center area (FCC March 17, 2005, Report and Order, CC 96-45, FCC 05-46, para. 77). Although the PSC's rules do not specifically address the redefinition process, they

⁵⁴ In its March 17, 2005, Report and Order (CC 96-45, FCC 05-46) the FCC adopted minimum requirements for ETC designations to create a more rigorous process. The FCC agreed with the Joint Board's recommendation to not change its rules and procedures to redefine service areas for rural ILECs (para. 6, 74, 75). The Joint Board also advised the FCC to adopt permissive federal guidelines. The FCC in its Highland Cellular ETC Designation Order concluded, in part, that an ETC may not be designated below the wire center level served by a rural ILEC (para. 15). Cream skimming is examined when an ETC seeks designation below the "study area" level (para. 18).

generally require under the public interest standard that designations comply with all laws (38.5.3213 A.R.M.). The rules on coverage permit the PSC to approve or modify a plan if it would be in the public interest (38.5.3213 A.R.M.). Thus, there is overlap between the PSC's approval of the redefinition and PSC's approval of the ETC designation petition. The public interest aspects are further discussed later.

MTA's opening brief advises the PSC to weigh carefully the standards it imposes and the long-term effects of setting in place a mechanism by which the incoming carriers may petition to redefine an ILEC's study area. Although neither of TTCA nor CMC opted to disaggregate their respective service areas, the PSC does not believe it is necessary to do so, at least not at this time. If and when another carrier petitions to redefine either of TTCA's and, or, CMC's study area, the PSC may reconsider the need for disaggregated cost information. Critical to the PSC's granting of TCSs' petition to redefine the two ILEC's study areas is TCS's assertion that the PSC's action will not limit what-so-ever any redefinition requests and, or, ETC petitions by subsequent ETC applicants (see fn. 15 and 16). That is, the PSC could, but it need not necessarily, approve of another ETC's petition to be designated for an area that matches TCS's petition in this docket or for any other area for either of the two ILECs.

Although there were problems with TCS's density data, the PSC is satisfied by the combined access-line density data TCS eventually filed that there is no egregious case of cream skimming. First, in regard to density data, TCSs' filing did not contain the minimally acceptable level of detail expected of an ETC applicant. Absent its responses to discovery and late-filed exhibit requests, TCS would most likely have had to refile its application with adequate information. The absence of such information in an initial filing, especially, given the precedent FCC cases and the FCC's March 17, 2005, Report and Order, will not be acceptable in any future redefinition application.

Second, as for population density data, TCS provided the population and density of the current and the proposed study areas by county. DR MTA -011, but also DR MCC -004. The proposed study area counties (Blaine, Liberty and Phillips) have a population density of 1.41 per square mile. The current combined study area has a density of 3.14 per square mile. TCS

concludes, based upon this data, the redefined service areas are not more densely populated and therefore are not lower cost. TCS's population density analysis is not particularly useful given the existing study area density data contains in the 3.14 per square mile estimate counties that have high density areas (*e.g.*, the Havre wire center in Hill County) that TTCA does not serve. The converse may as well hold.

The PSC finds more merit in the access line density data TCS filed, albeit in a late-filed exhibit (see fn. 38). The PSC finds that TCS's density data for the combined study area to be most relevant. It is also relevant because there is arguably a community of interest that overlaps portions of the two ILEC's study areas.

While not contained in TCS's testimony, what is also relevant is the relation of the density of the existing and the redefined study areas of each ILEC to the density of more urban areas of the country. If customers in rural areas, such as TTCA's and CMC's study areas, are to begin to have wireless services that are comparable to those available in urban areas of the country, then there is need to progress in that direction. That is the law. TCS's ETC application is an effort to advance the provision of universal service in rural areas of Montana. In addition, as the FCC notes "Although giving support to ETC's in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality" (FCC 05-46, CC 96-45, March 17, 2005, para. 56). TCS's use of combined density data is, therefore, a reasonable approach. And, if cost correlates to density, then the cost that TCS incurs must also be considerable relative to the cost other wireless carriers incur to serve the more urban areas of the country.

For the above reasons, the PSC approves of TCS's proposal to redefine the study areas of each of TTCA and CMC. Approval of TCS's redefinition proposal is in the public interest.

Designation of TCS in TTCA's and CMC's Redefined Study Areas

The Commission's prior orders granting ETC petitions are relevant to TCS's petition. Two recent orders involving CCC and SCI contain requirements the PSC will include in its

decision on TCS's petition. In the latter case, SCI commits to achieve 98% coverage in the ILEC service areas of Nemont and Project. First, however, a summary of a recent FCC decision is noteworthy.

When it released its March 17, 2005, Report and Order (CC 96-45, FCC 05-46) the FCC adopted minimum requirements for ETC designations that created a more rigorous process. The Joint Board also recommended that the FCC adopt permissive federal guidelines. Before the FCC will approve of an ETC's designation petition, an ETC must, among other requirements, demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) how it will remain functional in emergencies; (3) that it will satisfy consumer protection and service quality standards; (4) that it will offer local usage comparable to that offered by the ILEC; and (5) an understanding that it may have to provide equal access. *Id.*, para. 20. The FCC encourages state PSCs to follow the FCC's adopted requirements. *Id.*, para. 21. As for local usage plans, the FCC permits an ETC applicant to offer local calling plans with differing calling areas, limits on the number of free minutes and bundled local and long distance. *Id.*, para. 33. The PSC finds that TCS has adequately satisfied these and other requirements to be designated an ETC.

General

The PSC finds that TCS has sufficiently satisfied the requirements set forth in §214, including the public interest standard, to be designated an ETC in the redefined study areas of TTCA and CMC. TCS commits to offer the required services by means of using its own services in combination with services that SCI and its affiliates may provide. TCS does not agree to resell the wireless services of other carriers. TCS commits to advertise the availability of such services using media of general distribution.

TCSs' ongoing compliance with the conditions set forth in this order is required. In this regard, the PSC's evaluation of TCS's compliance is appropriately consistent with recent PSC orders designating carriers as ETCs and with the PSC's rules. There is, however, the potential for unique aspects with each ETC petition, aspects that may require unique PSC findings.

Advertising

As for the MCC's assertions that TCS has not explained its plans for advertising, the PSC disagrees, the record appears sufficient on the issue of advertising. Similarly, the PSC's order on SCI's ETC petition (PSC Order No. 6687a) found acceptable SCI's commitment to advertise in newspapers in the eight affected counties, combined with other information provided to customers and advertisements on its website. While the PSC does not object to TCS's willingness to supply "brochures" to customers by means of its website, given the Internet is not used ubiquitously, it is no substitute today for advertising through newspapers, television, and radio.

Public Interest

In order for a designation to be in the public interest the PSC must thoroughly review whether TCS complied with both the requirements set forth in §214 of the '96 Act and with any additional requirements that the PSC has established either in its rules, previous orders, or this order. The PSC has authority to establish such requirements and it has chosen to exercise that authority. In its decision, the PSC will consider the standards that were in the PSC's final order approving SCI's ETC petition (PSC Docket No. D2004.1.7, Order No.6687a, December 7, 2005). The FCC March 17, 2005, Report and Order (FCC 05-46, CC 96-45) adopted mandatory minimum requirements for ETC designations that are subject to § 214(e)(6) proceedings. These requirements are, however, optional recommendations that the FCC urged states to adopt. Many of the PSC's own ETC rule requirements are also reflected in the FCC's recent minimum requirements.

Designated Study Areas and Service Coverage and Build-Out Plans

Just as SCI did not have to satisfy the 98% population coverage requirement upon designation nor should TCS have any such similar obligation for the redefined service areas of each ILEC. There is no reason to impose an obligation on TCS to serve, upon designation, 98% of either company's redefined study area. Since the FUSFs that will port to TCS from each of

TTCA's and CMC's study areas are based upon each ILEC's own costs for its entire study area, it is appropriate for TCS to expand its coverage into unserved areas. TCS plans to build out into those areas.

TCS has provided maps to explain its build-out plans. TCS estimated, based on landline serving locations to already serve 88.7% of the subscribers in the redefined service areas. DR PSC -017(a). Beginning in 60 days, and then at 6 month intervals, TCS must file reports on its progress in expanding its wireless coverage to achieve its build-out plans. The PSC finds that while five years seems a long time to achieve build-out plans, that amount of time is consistent with the PSC's recent rules (38.5.3213 ARM). Five years is also allowed in the FCC's recent rules establishing minimum requirements for carriers that seek to be designated as ETCs (March 17, 2005, Report and Order, FCC 05-46, CC 96-45). The PSC's designation of CCC and SCI as ETCs also allowed five years to achieve 98 % coverage. TTCA's and CMC's study areas are most likely like Nemont's, Project's, and Mid-River Co-op's study areas, two of the least densely populated study areas in the continental United States. Therefore, in the case of the redefined rural study areas of TTCA and CMC, five years is a reasonable amount of time for TCS to achieve 98% coverage. The PSC finds that TCS must serve, by means of its own resources, all reasonable requests for wireless service at residences and businesses in each ILEC's redefined study area so long as there is no conflict with other licensed wireless carriers.

Several parties recommended denial of TCS's petition because TCS does not own sufficient facilities to qualify as an ETC. The common refrain was TCS only owned one of seven towers. The PSC finds that since TCS commits to own all new towers, in addition to one of the existing seven towers, it surely owns sufficient facilities. TCS also commits to use its own base stations (see fn. 3).

Section 214(e)(1) Supported Services: Voice Grade Access

One of the nine supported services requires ETCs to provide voice grade access in at least the 300 to 3000 Hertz bandwidth (47 C.F.R. 54.101(a)(1)). TCS asserts its wireless service will at least span the 300 to 3000 Hertz bandwidth and adds that the service quality for transmission

will be at least -104dBm. As TCS's ETC petition is for where it has 800 MHz licenses, TCS may not use the 700 MHz nor the 1900 MHz spectrum to, in turn, receive FUSFs.

Use of Federal Universal Service Funds

Although the PSC does not otherwise regulate TCS, how the company uses FUSFs is controlled by statute, principally §254(e). The annual certification process involves the PSC in use of FUSF matters.⁵⁵ Whereas the PSC has relied on a self-certification mechanism, if and when this approach appears inadequate for a specific carrier, the PSC will then consider a more in depth review.

Fund Size

The PSC is concerned about the size of the FUSF. The FCC has also expressed heightened concern about the size and growth of the FUSF.⁵⁶ There is a real risk that if the FUSF size continues along its recent growth path, legislation could be enacted to limit the FUSF's size. Any such legislation could damage the ability of carriers to operate, maintain, and expand networks to achieve the universal service principles set forth in §254(b). As evident from TCS's testimony, however, wireless services will not emerge in areas such as the unserved areas it intends to serve, that are comparable to services offered in urban areas, unless it receives FUSFs. The PSC finds it is in the public interest to use FUSFs in this manner.

⁵⁵ A.R.M 38.5.3216. Also, §254(e) of the Telecommunications Act of 1996 states, in relevant part: "A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section."

⁵⁶ In its Virginia Cellular Order (FCC 03-338, CC Docket No. 96-45, Released January 22, 2004) the FCC asserted: "Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in high-cost support distributed to competitive ETCs... We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Virginia Cellular and other competitive ETCs may receive in the future." Para. 31, emphasis added.

MCC's witness Buckalew said TCS must document that each line it serves is a new and not a currently served line of the existing ETC. The PSC has addressed this MCC position previously. The PSC finds that the FCC is the appropriate forum for the MCC to have its concern addressed.⁵⁷

Service Quality Monitoring

The PSC will monitor TCS's provision of wireless service. TCS must report to the PSC the requests for wireless service for each of the TTCA and CMC redefined study areas that it is unable to satisfy. TCS must report the number of unsatisfied requests regardless of how those requests were communicated (*e.g.*, voice, email, letter, and so forth).

The PSC requires these reports to detail the unsatisfied service requests by location for each of the two study areas. The reports must provide a detailed description of why customer requests for service could not be satisfied. TCS must file such reports for each study area on a quarterly basis for as long as it is designated an ETC.

TCS must also document and report to the PSC on the customer complaints that it receives. For each of the two redefined study areas for which TCS is designated an ETC it must record the complaints that it received from customers, identify the nature of the complaint (*e.g.*, poor transmission, dropped calls, busy signals) and identify the remedy employed to address each complaint. Based upon these records it must be possible to map the complaints to addresses within each study area. If repeat complaints are received, then a record of such repeat complaints must be maintained. The customer complaints reporting requirement pertains to TCS's provision of service only at the addresses of both residential and business subscribers in the redefined study areas for which TCS is designated an ETC. The reports must be supplied to the PSC on a

⁵⁷ See for example the PSC's Final Order No. 6518(a) in D2003.8.105, wherein the PSC stated: "For that reason, the MPSC finds that the MCC's testimony on how to interpret what "new" and "former" subscribers (FCC Rules, Section 54.307) is an issue that is more appropriately resolved by the FCC. Therefore, it appears to the MPSC unnecessary for it in this docket to address how to interpret the FCC's rules on new and captured customers."

quarterly basis.

Federal Universal Service Fund Receipts

In conjunction with being designated an ETC TCS must report to the PSC the FUSFs, including Lifeline, Enhanced Lifeline, and Link Up funds that it receives. The reports must also disaggregate the amount of other portable support that TCS receives (*i.e.*, high cost loop, local switching, and so forth). The reports must be filed quarterly and separately for each of TTCA's and CMC's redefined study areas. Prior to TCS's seeking FUSF support for customers served by means of the 700 MHz and the 1900 MHz spectrum, TCS must refile a new petition for designation as an ETC. If TCS intends to provide service by means of another platform (*e.g.*, VoIP), it must file its intent with the PSC.

Service Package

As long as TCS is designated an ETC it must have on file with the PSC a copy of each rate plan for which it receives, or for which it may receive, FUSF support. Each plan must include the rates, the terms, and the conditions of service.

In its initial brief, MCC asserts that in order to pass the public interest test, TCS must have Lifeline and Link Up programs for low-income subscribers. The MCC is not aware of any Lifeline and Link Up rates presented by TCS and adds that anything TCS will do is speculative. DR PSC -031(a). TCS, however, agreed to offer Lifeline service, including Enhanced Lifeline, to qualifying subscribers under the terms and conditions of federal rules and Montana rules. TCS cannot receive the benefits of such offerings until it is designated an ETC.

Comparable Services

The PSC's decision to grant TCS's petition should, in part, be premised on providing comparable services and rates in rural areas as are available in urban areas. There is an absence of information on how the rates TCS will charge compare to those in urban areas outside of

Montana or that such a comparison is irrelevant. However, at least one wireless package that TCS will offer is priced below each TCS affiliate's land line rates.

As for MCC's position that TCS's rates must be at or below the ILEC's rates, Stevens' testified the "usage blocks" in TCS/SCI plans will minimally match or generally exceed the "geographic area" covered by TTCA and CMC (p. 17).⁵⁸ Although Stevens' testimony appears to mix free-of-charge local usage (defined as an amount of minutes of use of exchange service) with geographic scope, it is difficult to get a perfect comparison of wireline and wireless service products for different technology platforms. The FCC acknowledged in its March 17, 2005 Report and Order (CC 96.45, FCC 05-46): As for local usage plans, the FCC permits an ETC applicant to offer local calling plans with differing calling areas, limits on the number of free minutes, and bundled local and long distance (para. 33). The PSC would add that with the broader calling areas accessible to wireless customers, some charges for toll calls will be avoided. Again, this is one reason why wireless is a complement to and not a substitute for wireline service, a point on which the MCC agrees. The PSC finds that TCS has provided sufficient information for a comparison of its rates to its affiliates' rates and that comparison is adequate.

Competition

MCC asserts competition is not improved by having two ETCs provide universal service under the same company structure and that it is not in the public interest to allow the same companies to both tap the FUSF. The PSC agrees with the MCC that TCS's designation will not result in competitive pressure on TCS's landline affiliates. Wireless service, however, is not generally viewed as a substitute for, but is a complement to, landline service. In addition, §254 of the '96 Act does not make competition an explicit principal that must be achieved to preserve and advance universal service.

⁵⁸ TCS clarified, somewhat, that the usage block coverage is only with respect to the redefined area. DR PSC -010(c). TCS will not offer unlimited usage as do the ILECs. DR PSC -010(d). TCS's rate plans do not vary with respect to whether the subscriber receives analog or digital service, or whether the service is fixed or mobile wireless. DR PSC -011(e).

The PSC agrees that wireless service is, for the most part, a complement to landline service. The PSC agrees that competition is a relevant public interest consideration as is the provision of wireless service to an area devoid of such service. The absence of competitive pressure by a wireless affiliate was neither a problem with CCC's nor SCI's designation as ETCs and nor is it a problem in this docket.

On balance, the PSC finds that it is in the public interest to designate TCS as an ETC. TCS seeks to serve areas within each ILEC's redefined study area where there is at present no wireless service provider. While the PSC cannot and will not prejudice any subsequent ETC petition the PSC will, in the future, also consider as part of its public interest criteria the impact of competition such a designation would bring to remote areas of Montana.

FCC Application -- Redefinition

As for next steps involving the proposed redefinition it appears, based on 54.207(c)(1), either the PSC or TCS could petition the FCC (see fn. 4). The PSC expects TCS will make such a filing, appending this order in support of its petition.

CONCLUSIONS OF LAW

All introductory materials, summaries of testimony and arguments, findings of fact, and discussion above that can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this order are incorporated herein as conclusions of law.

The PSC has jurisdiction over applications for designation as an eligible telecommunications carrier in Montana. 47 U.S.C. § 214(e)(2); § 69-8-840, MCA. The PSC has considered all laws, federal and state, applicable to state designation of ETCs for receipt of federal USFs. The PSC determines that TCS has met the legal requirements for designation.

ORDER

All introductory materials, summaries of testimony and arguments, findings of fact, conclusions of law, and discussion above that can properly be considered an order and which should be considered as such to preserve the integrity of this order are incorporated herein as an order. All pending objections, motions, and arguments not specifically ruled on in this order are denied, to the extent that such denial is consistent with this order.

IT IS HEREBY ORDERED that the Triangle Communications System, Inc., application for designation as an eligible telecommunications carrier is granted, subject to the terms and conditions of this order. Designation does not include certification for receipt of federal universal service funds, which is a separate process.

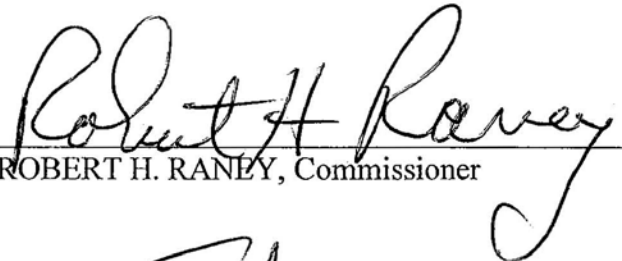
Done and dated the 8th day of May, 2007, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION


GREG JERGESON, Chairman

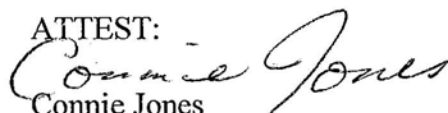

DOUG MOOD, Vice-Chairman


BRAD MOLNAR, Commissioner


ROBERT H. RANEY, Commissioner


KEN TOOLE, Commissioner

ATTEST:


Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a copy of a **FINAL ORDER NO. 6723a DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIER** issued in D2004.1.6 in the matter of Triangle Communication System, Inc. - Application for Designation as an Eligible Telecommunications Carrier has today been served on all parties listed on the Commission's most recent service list, updated 5/17/06, by mailing a copy thereof to each party by first class mail, postage prepaid.

Date: May 31, 2007

Debbie George
For The Commission

Intervenors:

3 Rivers Telephone Cooperative, Inc.

Cable & Communications Corporation

Mid-Rivers Telephone Cooperative

Montana Consumer Counsel

Montana Telecommunications Association

5/31/2007

Utility - Docket Service List

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5/31/2007

Utility - Docket Service List

Docket no: D2004.1.6

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Exhibit B

Service Date: August 14, 2007

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF TRIANGLE)	UTILITY DIVISION
COMMUNICATIONS SYSTEM, INC.,)	
Application for Designation as an)	DOCKET NO. D2004.1.6
Eligible Telecommunications Carrier)	ORDER NO. 6723b

FINAL ORDER
ORDER ON RECONSIDERATION

A. INTRODUCTION

On January 16, 2004, Triangle Communication System, Inc. (TCS or Tri-Com), applicant in the above-entitled matter, petitioned the Montana Public Service Commission (PSC) to be designated as an eligible telecommunications carrier (ETC) for service in Montana. TCS subsequently submitted on January 20, 2006, the last of two amendments to its initial application.

On May 31, 2007, the PSC issued its Final Order (*PSC Order No. 6723a*) designating TCS as an ETC, with conditions. The Order includes a summary of the record evidence and the arguments (briefs) and the PSC's findings, discussions, and conclusions.

On June 15, 2007, the Montana Consumer Counsel (MCC) and the Montana Telecommunications Association (MTA), intervenors in the proceeding, each filed motions for PSC reconsideration of the Order. On June 22, 2007, TCS filed its response to the motions.

TCS maintains the MCC's position that the PSC's order is neither "reasoned nor supported" is not credible. TCS adds that each issue that the MTA and MCC raised is refuted by testimony and other substantial evidence of record. TCS maintains there can be no abuse of discretion or arbitrary or capricious conduct by the PSC and the record can and does support the PSC's findings and decision. The PSC will include at relevant points certain of TCS's other responses.

In the following, the PSC will, in turn, review the MTA and the MCC motions and provide the PSC's determinations. The PSC notes that each petition for designation as an ETC

raises unique and complex matters, and the TCS petition is no exception.

B. MTA MOTION FOR RECONSIDERATION

1. General

MTA requests the PSC reconsider its decision to approve TCS's application to be designated an ETC in a redefined service area within the study areas of Triangle Telephone Cooperative Association, Inc. (TTCA), and Central Montana Communications, Inc. (CMC). MTA asserts the PSC has allowed TCS to serve individual wire centers constituting one-third of TTCA's and CMC's landline service locations and about one-third of the geographic study areas. MTA concludes that there is but one conclusion allowed in this proceeding, which is to reject TCS's application. Following are the three distinct sections of the MTA motion including: MTA Arguments on Redefinition; MTA "Argument"; and MTA "Other evidence the Commission did not consider."

2. MTA Arguments on Redefinition

MTA asserts its primary focus regards TCS's amended application through which TCS requests redefinition. MTA adds that this is a matter that has significant consequences to all carriers. MTA asserts there is nothing in Order 6723a that sets forth the basis for the PSC's decision. MTA adds that the below arguments and evidence were presented but not considered by the PSC.

The PSC has initial limited comments on MTA's participation in this proceeding. Whereas the MTA is critical of TCS for having tendered one witness, the MTA filed no testimony on a matter it believes has a significant impact on all carriers. Aspects of the MTA's motion for reconsideration raise arguments that were not supported by prefiled testimony and are not in evidence. In addition, the MTA's motion appears to raise due process issues. The PSC will however respond to the MTA's arguments. The PSC would note here that on the occasions both MTA and MCC raised similar issues, the PSC will attempt to appropriately link those

arguments and the PSC responses. The MTA's redefinition arguments and the PSC's determinations follow.

a. First Argument

The MTA asserts TCS's "proposed service area" is currently being served by other wireless carriers receiving universal service support as ETCs. Therefore, MTA argues the PSC must analyze the need for multiple "wireless ETC's" (sic) in CMC's and TTCA's service areas and address whether the public interest is served by redefining those service areas pursuant to TCS's request.

PSC Determination

The PSC finds the MTA assertion that TCS's proposed service area is served by multiple other wireless ETCs to be incorrect. Also see the PSC's response to the MCC's second argument under the heading "3. MCC Arguments – Designation" that pertains to identifying the unserved areas that TCS will serve. The PSC finds the MTA assertion of multiple competitive wireless carriers to be inaccurate based on Exhibit (Number 1) attached to TCS's January 20, 2006, amended application. The assertion MTA makes is not supported by this exhibit. Of the roughly fourteen towers identified on the TCS exhibit, there is overlap between TCS and one other ETC, Sagebrush Cellular Inc. (SCI), that may involve the Whitewater, Harb, and Malta towers of TCS. "May" is the appropriate word, as the overlap involves "proposed" SCI towers. Otherwise, there is no other wireless ETC, contrary to the MTA's assertion, identified on this exhibit. As noted elsewhere, it is the intent of TCS to serve unserved areas. Even if the MTA assertion of multiple wireless ETCs is correct, which it is not, the FCC does not limit the number of wireless carriers that could be designated as ETCs (*see*, ¶ 57, *Report and Order, FCC 05-46, CC 96-45, Released March 17, 2005*).

b. Second Argument

MTA asserts the PSC made no findings on whether redefinition is in the public interest given TCS is affiliated with and shares the same general manager with TTCA and CMC. The

MTA said the PSC cites no authority when it concluded that neither the law nor the rules carve out and preclude circumstances involving affiliates of incumbent local exchange carriers (ILECs). The MTA requests the PSC to specifically address how it determined that, by allowing an affiliate to redefine its parent company's service area, the public interest is served.

PSC Determination

The PSC finds this argument by the MTA to marry two aspects of the circumstances involved in redefining TCS's affiliates' study areas: 1) that TCS is affiliated with the underlying ILECs, TTCA and CMC; and 2) that the ETC petitioner seeks to redefine its affiliates' service areas. First, in prior decisions the PSC has designated as an ETC the wireless affiliate of a wireline ILEC. The MTA is aware of these PSC decisions due to its intervention in both PSC Dockets No. D2003.8.105 and D2004.1.7, respectively involving ETC petitions by Mid-Rivers Cellular (MRC) and SCI. Aside from the precedent these two earlier dockets established, there is no legal prohibition on designating the affiliate of a wireline ILEC as and ETC.

As MTA is aware, the PSC has authority, in cooperation with the FCC, to redefine service areas. The MTA must also be aware the FCC's rules do not say they apply to all but the ETC petitions of an affiliate.

As for why it was in the public interest to designate TCS in the redefined service areas the PSC has provided, contrary to the MTA's assertion, an explanation. That explanation is so that consumers in unserved areas may have, in addition to the nine supported services, access to the advanced service mobility that is available to consumers in more urban areas of the country. The PSC does not agree with the MTA that it is in the public interest to deprive TCS's unserved rural consumers of the public interest benefits of mobility in telecommunications. With TCS's designation as an ETC, rural Montanans in these unserved areas will gain access to wireless service, in addition to the supported services, that is not otherwise available.

c. Third Argument

The MTA asserts the PSC made no findings as to why it is in the public interest to redefine the service areas of TTCA and CMC where neither ILEC has disaggregated service.

The MTA adds that the PSC and the FCC must consider the extent to which the ILECs may have disaggregated their study areas in analyzing redefinition petitions. Because neither ILEC disaggregated, MTA suggests the PSC must make a factual determination as to why “that” is not relevant. Minimally, the PSC must address why it did not find the FCC’s requirements regarding disaggregation relevant to its analysis granting TCS’s redefinition petition.

PSC Determination

The PSC finds this argument an example of how the MTA’s motion exceeds the limit of relevant points for a motion for reconsideration. The MTA did not testify on or raise in hearing any disaggregation issue. Not until briefing did the MTA first raise the disaggregation issue. Thus, there is not an iota of evidence in the evidentiary record MTA presented on the issue of disaggregation. Because the MTA’s only citation (*see MTA motion, f.n. 6*) was incomplete the PSC attempted to identify the FCC order that the MTA appears to have referenced. The PSC would only add that parties also have an obligation to not abuse the due process rights of all others in a proceeding.

Assuming the PSC has discovered the correct FCC document that the MTA partially cites, the PSC has several comments. The MTA absolutely errs when it asserts the PSC must consider the extent to which an ILEC has disaggregated. This is obvious from a reading of the FCC’s “Report and Order” (*In the Matter of Federal-State Joint Board on Universal Service, FCC 05-46, CC 96-45, Released March 17, 2005*). The FCC was quite clear that this order is one which encourages states to consider, but for which there was no mandate to consider, ETC designation requirements.

Also, the FCC order does not reach the conclusion that the MTA asserts it to have reached. To wit, the FCC said: “We urge commissions to apply the Commission’s cream skimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether cream skimming concerns are present.” The FCC also said “...although disaggregation may alleviate some concerns regarding cream skimming by ETCs, because an incumbent’s service area may include wire centers with widely disparate population densities, and therefore highly disparate cost

characteristics, disaggregation may be a less viable alternative for reducing cream skimming opportunities.” For these reasons, the MTA’s argument is obviously mistaken.

d. Fourth Argument

MTA asserts the PSC simply stated that although the ILECs in this case have not disaggregated that fact would not prejudice this proceeding, but may prohibit applicants “from being designated ETC’s (sic)” in those areas. The MTA then cites the PSC’s finding: “If and when another carrier petitions to redefine either of TTCA’s and, or, CMC’s study area, the PSC may reconsider the need for disaggregated cost information.” The MTA then asserts the PSC must make specific findings that form the basis of a reasoned decision, that is not considered arbitrary and capricious, and that will not apply on an ad hoc basis. The MTA interprets the PSC’s findings to have granted redefinition petitions “randomly” and without any “logical parameters.” The MTA concludes that this provides future applicants no direction as to what might be expected.

PSC Determination

The PSC would first direct the MTA to the PSC’s response to the MTA’s third argument above. The PSC in addition finds this fourth argument an attempt to set an impossible standard. The PSC has universal standards that apply to all ETCs. That said, the PSC considers each ETC application on its own merits. When the circumstances change, as they appear to do with each ETC petition, so will the PSC’s public interest policies and requirements. If and when it appears necessary to require either of the underlying two ILEC ETCs to disaggregate, the PSC will not hesitate to impose such a requirement. That obligation did not emerge in this docket however, and it may never emerge. The FCC also recognized the limitations of a disaggregation cost study (*see Report and Order, FCC 05-46, CC 96-45, Released March 17, 2005, ¶ 51*).

e. Fifth Argument

MTA cites to the FCC rules that prohibit a state commission from designating as an ETC a carrier that offers services “only” through resale of another carrier’s services. The MTA

concludes that because TCS markets all of its services as SCI services and because SCI handles “all switching, billing, determination of rate plans, and most of the administrative functions of TriCom,” TCS is not facilities based. The MTA asserts the only evidence is that TCS may own one tower. MTA then asserts the PSC must make findings that explain why it is in the public interest to grant ETC status to a carrier that is “offering services on a largely resale basis” (emphasis added).

PSC Determination

The PSC finds this MTA argument to inaccurately characterize TCS’s ownership interests. First, the FCC’s rules assert that an entity that offers the supported services exclusively through resale shall not be designated an ETC. TCS obviously passes this bright-line test. Therefore, the MTA’s argument on this basis alone fails. That said, as the MTA is well aware “resale” has a fairly specific definition in the context of the Telecommunications Act of 1996 (’96 Act). In this regard, TCS has declined to resell the services of other carriers as it cannot vouch for the integrity of those services (*see Order 6723a, p. 35*). Otherwise, also see the PSC’s findings in response to the MCC’s first argument under the heading “3. MCC Arguments -- Designation.”

f. Sixth Argument

The MTA’s sixth argument asserts TCS’s petition is not based on ability to serve and is therefore distinct from any other redefinition petition granted by any state commission or the FCC. The MTA adds that TCS has FCC licenses to provide wireless service throughout both CMC’s and TTCA’s entire study areas but seeks, and was granted, permission to serve one-third of both of those areas. MTA notes that TCS’s statements in its petition that acknowledge its desire to serve “this small area” are not technically based but, instead, meet the carrier’s “business interests.” Therefore, MTA asserts that the PSC must make findings of fact as to why it is in the public interest to grant TCS’s petition when TCS is able, but unwilling, to serve the entire areas of both CMC and TTCA and the PSC must also determine whether a carrier’s self-

defined “business interest” is a valid factor in determining the basis for redefinition of service areas.

PSC Determination

As for the MTA argument that TCS has the ability but is unwilling to serve, also see the PSC’s response to the MCC’s seventh argument under the heading “2. MCC Arguments -- Redefinition.” The PSC would add that TCS did not petition to receive FUSFs for areas it serves by other than its 800 MHz licenses. In addition, the PSC prohibits TCS from receiving any FUSFs for wireless service it provides by other than its 800 MHz licenses.¹ The MTA’s preference appears one of forcing a carrier that cannot make a business case, to provide a service that could place the carrier at risk of insolvency. This advocacy is unwise and not one the PSC will endorse. Also, as TCS asserts in its June 22, 2007, response to motions for reconsideration (*at p. 4*), it has clarified that it does not hold “wireless licenses” for the entirety of TTCA’s and CMC’s study areas. TCS adds that the majority of the exchanges of Broadview, Rapelje, and Molt fall outside the 800 MHz and the 1900 MHz licenses held by TCS. TCS further adds that it will be the “first and only wireless ETC in Central and Triangle’s service area” (*see TCS’s June 22, 2007, Response to Motions, pp. 4, 6*).

g. Seventh Argument

The MTA’s seventh argument asserts the PSC must make findings of fact as to the extent SCI is the provider of telecommunications services “in the area (sic),” and whether the tower and related plant TCS counts as “facilities” in its application are actually facilities purchased and owned by SCI with universal service support. MTA adds that the PSC must determine the extent to which universal service support provided to SCI, Nemont, Triangle, Central, TriCom, or some combination of these carriers is separate and distinct, or in fact has the potential to overlap by any carrier or combination thereof.

¹ PSC Order 6723a, p. 38: “As TCS’s ETC petition is for where it has 800 MHz licenses, TCS may not use the 700 MHz nor the 1900 MHz spectrum to, in turn, receive FUSFs.”

PSC Determination

The PSC finds the MTA's seventh argument, actually arguments, to also raise issues that MTA could have raised and included as evidence. The PSC would also note that it has addressed elsewhere the facilities TCS asserts to own and that it will own (see the first argument under the heading "3. MCC Arguments – Designation"). In addition, as TCS asserts in its June 22, 2007, Response to Motions for Reconsideration, TCS's services are branded under SCI's name to take advantage of scale efficiencies. Also, as TCS and SCI do not provide wireless service in the same areas in Montana, there is no issue of either company overlapping into the service area of the other or collecting USF funding from the same customers.

h. Eighth Argument

The MTA's eighth argument asserts the PSC made no findings of fact in regard to TCS's burden of proof. The MTA argues the PSC only stated that TCS's application "is inadequate," that it "did not contain the minimally acceptable level of detail expected of an ETC applicant," and designation would not have been granted unless other parties had conducted discovery. The MTA further adds that the PSC found acceptable the bolstering of TCS's application by late-filed exhibits (LFEs). The MTA concludes that the PSC must make a factual determination as to which party carries the burden of proof and set forth precisely what factual evidence was presented to meet its burden.

PSC Determination

As for the non-legal aspects of TCS's burden of proof argument, it would have been helpful if the TCS's initial application contained the access line density data that TCS provided in response to the PSC's LFE requests. The PSC's ETC rules do not, however, specify any filing requirements for redefinition applications. Contrary to the MTA's assertion that the PSC said it "did not rely on the late-filed exhibits," the PSC did rely on the data in TCS's August 24, 2006, LFE response to the PSC's LFE request.² Also see the PSC's response to the MTA's eleventh

² PSC Order No. 6723a, p. 34: "The PSC finds more merit in the access line density data TCS filed, albeit in a late-filed exhibit (see fn. 38). The PSC finds that TCS's density data for the

argument (*infra*). Finally, the PSC would note that MTA's April 8, 2004, PSC Docket No. D2004.2.23 Comments, filed jointly with the Montana Independent Telecommunications Systems in the PSC's rulemaking for ETC designations was silent on the issue of, and the need for, rules that address the redefinition of study areas. Additionally, when a record includes substantial evidence supporting designation, which the record in this case does, burden of proof (in context of which party submitted the evidence) becomes immaterial.

i. Ninth Argument

In its ninth argument, the MTA asserts the PSC must set forth the findings of fact that regard the factors enumerated by the Federal-State Joint Board on Universal Service (FSJB) as referenced by the MTA's footnote 10, citing a FSJB Recommended Decision. In turn, the MTA asserts the PSC must: 1) evaluate whether the applicant is attempting to cream skim by proposing to serve only the lowest cost exchanges; 2) account for the unique situation of rural carriers; and 3) analyze whether redefinition will result in additional administrative burdens on the rural incumbents by requiring them to calculate costs based on something other than a study area level. The MTA adds that the PSC must determine whether the request is in the public interest.

PSC Determination

As the MTA's footnote 10 makes clear the FSJB makes recommendations to the FCC. It is the FCC that sets federal policy, in part based on FSJB recommendations. The PSC has considered the FCC's recommendations on both study area redefinition and ETC designations, as evident from the PSC's findings in this order and the underlying order. That said, the PSC has rules, ones that TCS satisfied as evidenced by the PSC's decisions in this docket. In turn, TCS has documented its satisfaction of § 214 criteria of the '96 Act. Finally, the PSC did explain in Order 6723a why it is in the public interest to designate TCS as an ETC.

combined study area to be most relevant. It is also relevant because there is arguably a community of interest that overlaps portions of the two ILEC's study areas."

j. Tenth Argument

The MTA's tenth argument requests the PSC to make specific findings of fact as to what guidelines will be imposed on each and every application seeking redefinition of an ILEC's service area in future petitions. MTA suggests the PSC must also explain what guidelines served as the basis of its present (this docket) decision. MTA requests that the PSC's order indicate this application is being analyzed and decided using standards that will be neither applicable to nor adequate for future filings (MTA cites to Order 6723a, page 33: "The absence of such information in an initial filing, especially, given the precedent FCC cases and the FCC's March 17, 2005, Report and Order, will not be acceptable in any future redefinition application.").

PSC Determination

As the PSC stated in the underlying Order and this Order each ETC application is unique. Applicants must minimally satisfy the § 214 requirements as codified in the FCC's and the PSC's rules. In addition, as the MTA is aware, the PSC imposes other requirements. As TCS's petition involved the issue of redefining the service areas of each of CMC and TTCA, the PSC sought and obtained additional information from TCS (the data in TCS's LFE). That information was relied upon by the PSC. Although there is no PSC rule that requires density data be filed, the PSC expects that density data will be forthcoming in the initial applications of any subsequent application to redefine an ILEC service area. The PSC will review such data and make decisions based on the circumstances involved in any such application.

k. Eleventh Argument

In its eleventh argument, the MTA asserts the PSC must set forth specific factual determinations as to why TCS's application is being approved, given the application does not meet the PSC's standards. The MTA also asserts that the PSC must explain why future applications will not be judged according to the same criteria used here.

PSC Determination

First, the PSC finds the MTA to misstate the PSC's findings in Order No. 6723a. The PSC made no general finding, as the MTA suggests, that the TCS application did not meet the

PSC's standards. Quite the contrary, TCS has satisfied the minimum requirements set forth in the FCC's and the PSC's rules and it commits to satisfy the other requirements that the PSC imposes on ETCs. The PSC did express its concern with having to obtain density data in a LFE. However, this concern could stem from the absence in the PSC's rules of any filing requirements for ETC applicants that seek to redefine service areas. As the PSC stated, although there is no specific rule requirement, the PSC expects any future application to redefine a study area, to include density data. Second, the PSC will consider each subsequent application on its own merits.

2. MTA "Argument"

After listing the above eleven arguments, the MTA next submits its "Argument." The PSC will enumerate and summarize points in the MTA's "Argument." Although some points are duplicative of the above eleven MTA arguments, other points are new. The PSC's findings will immediately follow.

The MTA asserts the PSC has not previously approved an application to redefine an ILEC's study area. Nor has any commission ever approved an application where the request was based on a desire to serve the most cost-effective area for the petitioning carrier to serve, in spite of the fact that the petitioning carrier had the ability to serve the entire area. MTA argues the PSC utterly failed to distinguish the controlling law regarding redefinition petitions. The MTA adds that the FCC's rules and orders do not allow a carrier to only serve an ILEC's most profitable areas. The MTA asserts TCS concedes there is no legal authority to support its request. Except for the MTA's legal conclusion, the PSC previously addressed this first point.

In its second point, the MTA asserts the PSC concluded there were problems with TCS's density data when, in fact, TCS presented no density data. The MTA asserts the only record evidence is that there are 4.177 access lines per square mile in CMC's "study area" while there are 1.526 access lines per square mile in CMC's "entire study area." The MTA asserts this is evidence that TCS is cream skimming. The MTA adds that the PSC made no attempt to explain why TCS's application is acceptable and the PSC cites to TCS's conclusion that the redefined

service areas are not more densely populated and therefore not lower cost. The MTA further adds that the PSC “appears” to have relied on commentary in a footnote to the LFE to draw this conclusion, a conclusion MTA asserts belies the statement at Order No. 6723a, p. 31, that the PSC did not rely on TCS’s footnotes to its LFE.

The MTA errs when it asserts the only record evidence is the access-line data for CMC. TCS’s LFE has access data for both CMC and TTCA. The PSC’s findings did rely upon the combined study area data in the LFE (*see Order 6723a, pages 17 and 34*). The PSC also explained why TCS’s application is not likely a case of cream skimming. The data the PSC relied upon in TCS’s August 24, 2006, LFE were self explanatory. Also see the PSC’s response (*infra*) to the MCC’s sixth redefinition argument.

3. MTA “Other evidence the Commission did not consider”

The PSC will enumerate and summarize points the MTA labeled as “other evidence the PSC did not consider.” Although some points here duplicate arguments the MTA previously made, other points are new. The PSC’s findings will immediately follow.

First, the MTA asserts the PSC must rise above the discourse involved in ETC designations and not rubber stamp applications but rather apply greater scrutiny. The MTA then recites the May 31, 2007, comments it submitted jointly with other state associations to the FSJB. The joint (state) association comments illuminate the FUSF growth problems caused by the identical support mechanism (ISM). These joint association comments cite to and concur with FCC Chairman Martin’s concern with the negative effect of designating multiple CETCs that provide complementary services in areas where support is needed for only one ETC. The MTA then asserts the PSC concurs with the FCC Chairman as evidenced by PSC Chairman Jergeson’s statement before the Senate Natural Resources and Energy Committee. Next, the MTA mentions the FSJB’s May 1, 2007, Recommended Decision to immediately cap universal service support for competitive ETCs. Finally, the MTA asserts the PSC approved the underlying Order in this proceeding after admitting it had not read the order.³

³ MTA states to recite the “introductory comments” to the draft order issued May 9, 2007.

The PSC's initial reaction to the MTA allegation that the PSC did not consider other evidence is that the MTA appears to be grasping at straws. The MTA has once more drawn upon extra-record material not in evidence. The MTA has suggested the Montana PSC Commissioners unknowingly signed off on a PSC order designating TCS an ETC. The Commissioners did not unknowingly sign Final Order 6723a. The Commissioners received on February 15, 2007, the PSC staff memorandum. Whereas the MTA's motion ambiguously cites to "introductory comments" to draft the order issued on May 8, 2007, the MTA fails to note that the PSC held two earlier work sessions on the staff's recommended draft order. At the conclusion of the second of these two work sessions the PSC voted unanimously, on March 27, 2007, to base the final order upon the PSC staff memorandum, as modified to address legal objections to LFEs. In the PSC's final work session the draft of Order 6723a was approved after the PSC affirmed that it comports with recommendations in the PSC staff's February 15, 2007, memorandum. Therefore, nothing could be further from the truth than the MTA's allegation that the PSC had not read or was unaware of the decisions it had made. The PSC suggests that those with an interest in an accurate understanding of the PSC's decision making process leading to the issuance of Order 6723a instead listen to the recordings of the PSC's March 27, 2007, and the May 8, 2007, work sessions. Access to these recordings is available at URL: <http://psc.mt.gov/eDocs/WorkSessionAudio/?year=2007>

As for whether wireless service is a complement or a substitute, there is uncontroverted testimony in this and in other recent PSC dockets that wireless is not a substitute for wireline service. TCS made this point in this docket. The company witnesses in the SCI and the Cable & Communications Corporation, d/b/a Mid-Rivers Cellular, ETC petition dockets made the same point. In addition, both Blackfoot Communications and OneEighty Communications testified before the PSC to agree with the regional bell operating companies (RBOCs) that wireless is not a substitute for wireline services. These positions, that wireless is a complementary service,

MTA's recitation is: "I do not expect the PSC will have time to thoroughly read this order prior to the scheduled work session. [...] At the same time, much of this is similar to pre-order memorandum material and is otherwise familiar to most of the Commissioners, as it is much like other designation orders issued in the past few years."

come from a spectrum of industry representatives that have first hand experience with both wireline and wireless businesses. The PSC expects that over time the complementary relationship between wireless and wireline will change. When such change occurs and is based on sound economic analyses the PSC will reconsider its findings. But, for now there is no reason to not agree with TCS's testimony that wireless is a complementary service to landline service.

The PSC adds the following empirical data on the loss of lines by ILECs and the growth of mobile wireless lines for Montana. These public data are from the FCC's Local Telephone Competition reports for June 2003 and June 2006. From June 2003 to June 2006, all ILECs in Montana lost 40,807 access lines (these data are not net of increased unbundled network element, UNE, subscriptions and resold lines). However, over the same time period Montana's ILECs added 18,653 resold and UNE leased lines. Thus, after netting out resold and UNE leased lines, Montana's ILECs lost about 22,154 lines between 2003 and 2006 (mid-year). In contrast to this exaggerated statewide loss of in 22,154 landline service, the number of mobile wireless lines increased from June 2003 to June 2006 by 233,989 subscriptions. Thus, there is a magnitude of difference between net wireline ILEC access line loss and mobile carrier access line growth. Wireless service is obviously a complement to wireline service for most individuals.

As for the policy implications of the MTA's argument, the PSC does not agree with the MTA's conclusion that, because wireless is a complement to wireline service, it follows that it would be redundant to designate wireless carriers as ETCs. It is obvious from the evidence in this record that FUSF support is essential for TCS to provide wireless service to unserved rural areas of Montana. It is also evident from the FCC's actions designating wireless carriers that the FCC and the PSC agree: wireless is a service deserving of FUSF support. And, if wireless was deserving of FUSF support as the FCC found for the states of New York, Pennsylvania, Florida, Georgia, Alabama, etc., (*see f.n. 6, infra*), the unserved rural carriers of Montana are no less deserving. To not grant TCS's petition is to deny citizens in rural areas of Montana services comparable to those made available in more urban areas of the country. Any such denial is more than arguably a flagrant inconsistency with a key principle in § 254 of the '96 Act.

C. MCC MOTION FOR RECONSIDERATION

1. General

The MCC generally holds that the PSC's final order granting the application of TCS for designation and redefinition affiliate service areas does not rise to the level of reasoned decision making and is not supported by record evidence. In short, MCC maintains the PSC's order is not clear on why the PSC approved the application of TCS. MCC adds the PSC's decision was not based on the record, but rather was based on a selective reading of the record in a manner that ignored other relevant testimony, arguments, and evidence. MCC adds that TCS did not carry its burden of proof. As for the standard for reconsideration, the MCC further adds that just because the motions for reconsideration contain nothing new should not mean that the PSC simply overlook or dismiss the issues. MCC argues that a case law to the highest level requires an agency to cogently explain the basis of any discretion in decisions it exercises. The MCC asserts to raise issues involving both TCS's redefinition and designation requests. The MCC's eleven arguments involving TCS's redefinition proposal are taken first.

2. MCC Arguments – Redefinition

The MCC makes eleven arguments in regard to the issue of redefinition. The PSC determinations follow each.

a. First Argument

The MCC asserts the PSC's public interest determination is based on improper findings and standards, such as that redefinition is permitted by statute and rule. The MCC adds the PSC should have instead examined the "relevant data."

PSC Determination

The PSC did not simply base its decision to approve of TCS's designation upon the fact that statutes and rules permit the PSC to do so. Since this case is the first to involve the redefinition of a carrier's study area, it is incumbent on the PSC to first establish that which the MCC would diminish: that the PSC does have legal authority to, in cooperation with the FCC,

redefine an ILEC's study area. The PSC would note however that there are no specific PSC rules that address redefinition.⁴ The PSC also examined relevant data. The balance of this MCC argument, unless addressed below, is too vague to permit a focused and reasoned PSC response.

b. Second Argument

The MCC holds that whereas TCS cites to eight occasions or cases wherein other states have granted redefinition proposals, the MCC and the MTA distinguished each case from the facts of the present TCS case.

PSC Determination

Each ETC petition must stand or fall on the record evidence. That this case can be distinguished from eight cases in other states is not obviously relevant. As noted, each ETC petition in Montana is unique, as evidenced by the MCC's decision to testify in this but not other dockets involving ETC petitions, including one that involved wireless and a wireline affiliates.

c. Third Argument

The MCC asserts that although Order 6723a summarized the briefs, the order did not consider the more analytical arguments of the intervenors as to whether the "precedents" are in fact precedents, which MCC holds they are not.

PSC Determination

As noted above, the PSC's decision did not and need not rest on the cited precedents. The states in cooperation with the FCC are obliged to respond to redefinition proposals. States do not all have the same ETC designation rules and policies. If there were uniquely important distinctions for the present case, they were not evident in the MCC's motion.

⁴ The FCC's rules (e.g., 47 C.F.R. § 54.207) are largely about the process of redefining service areas.

d. Fourth Argument

The MCC asserts the PSC's conclusion, that the redefinition has merit because it is not against the law, is not reasoned decision making.

PSC Determination

This argument relates to the first above MCC argument. Again, Order 6723a did not as the MCC suggests simply base the decision to approve of TCS's redefinition on the legal authority the PSC has to redefine study areas. That the PSC has legal authority in cooperation with the FCC is, however, relevant.

e. Fifth Argument

Whereas the MTA urged the PSC to weigh carefully the precedent established by this case, the MCC asserts the PSC relied on the argument of TCS that its petition will have "... no future effect on redefinition or ETC petitions." As for the PSC's finding, "...that that assertion was 'critical' to the Commission's grant of the proposal," the MCC responds that neither the PSC nor TCS can simply declare that an order will have no precedential effect. In turn, the MCC asserts "it" leaves the industry and consumers, to their detriment, with no certainty about what the PSC may next do. Thus, MCC suggests this "finding of fact" is without a factual basis.

PSC Determination

The MCC's motion is ambiguous and the PSC will address two separate aspects of its ambiguity. In addition, as framed by the MCC, the relevant PSC findings and determinations appear to be misconstrued. As for the first aspect, the PSC would not have approved of TCS's redefinition if the effect would have been to limit how subsequent ETC petitions might redefine the service area of either underlying ILEC. As TCS's testimony was not clear in this regard the PSC established, by means of discovery, that such limitation was not TCS's intent. Thus, the PSC will consider any subsequent ETC petition to redefine either or both of the two underlying ILEC's study areas on its own merit and without limitation imposed by the redefinitions approved in this docket.

Second, Order 6723a did not address the other aspect of this MCC argument, involving other petitioners and other ILEC study areas. The PSC will consider any such petition on its own merits. The PSC never said that this case would, or would not, have the effect of precedent on future cases.

f. Sixth Argument

As for the PSC's finding that there was no "egregious case of cream-skimming," the MCC said "egregious" is not the standard.

PSC Determination

The PSC's word choice is reasonable. While the MCC repudiates the PSC's choice of the word "egregious," as not being "the standard," the MCC never explains what standard it endorses. The MCC leaves to the PSC to puzzle about the preferred "standard," which the MCC never reveals. Therefore, the MCC's argument is neither clear nor complete.

That said, the FCC established guidelines for ETC designations that PSC's are encouraged, but are not obliged, to adopt.⁵ The FCC said that by serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than is reflective of the rural ILEC's costs. The FCC "encouraged" states to examine the population densities among wire centers to see if an ETC applicant would be serving "only" the most densely concentrated areas within a rural service area (*FCC 05-46*, ¶ 49). The FCC added that because low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve "only" the lower cost wire centers to the exclusion of other less profitable areas (*FCC 05-46*, ¶50).

The PSC finds it is apparent from evidence on CMC's study area and recent population statistics that TCS's application does not seek to just serve the relatively high density Montana towns in the underlying carrier's study areas. CMC's study area, the one on which the MCC has another argument, is illustrative (see the PSC's response below to the MCC's eighth argument).

⁵ FCC Report and Order, Released March 17, 2006, In the Matter of Federal-State Joint Board on Universal Service. FCC 05-46, CC 96-45.

Based on TCS's February 24, 2006, response to DR MCC -001 (Exhibit # 3) and the Attachment to TCS's January 20, 2006, amended application (Exhibit # 1) it is apparent that the CMC study area includes, in effect, two separate geographic areas. The larger of these two areas includes the relatively sizeable communities of White Sulphur Springs and Harlowton. In contrast, the other geographic area, running from Malta to Harlem, includes the relatively smaller community of Dodson. From a review of recent statistics, the PSC provides the July 1, 2006, population (in parentheses following each town) of: Dodson (109); Harlem (804); Harlowtown (899); Malta (1,887); and White Sulphur Springs (1,002). Thus, it is obvious TCS has not petitioned to only serve the relatively higher population density towns in CMC's study area. In addition, however, the communities of Cherry Ridge, Cleveland, Savoy, and Turner, communities that will also receive TCS' wireless service are so small that they are not even listed in statistical sources. The source of the above cited population statistics is:

http://ceic.mt.gov/Demog/estimate/pop/City/place_2000_2006.htm.

The MCC provided no evidence that TCS has failed this FCC test for cream skimming. If there is another bright-line test that cleaves cream-skimming from non-cream skimming cases, the MCC should have broached the standard in a timely manner. It did not do so, leaving the PSC to puzzle over what the MCC's standards are.

g. Seventh Argument

MCC holds that the PSC ignored evidence that TCS has licenses to serve the entirety of the two affiliated underlying carriers' study areas, but chose for financial reasons to instead serve where it has 800 licenses, a result the MCC defines as cream skimming.

PSC Determination

The TCS petition was only for 800 MHz licenses. To the PSC's knowledge, TCS cannot be forced to seek designation where it has licenses for another spectrum, perhaps to the detriment of its financial health. TCS made quite clear that even with FUSFs it could not economically, profitably, serve all areas. If forcing TCS to serve all licensed areas would threaten its financial health, then those redefined and unserved areas where TCS is willing to serve could be deprived

of advances in universal service. The MCC's preference is not one that the PSC will impose. Also see the PSC's response to the MTA's sixth redefinition argument.

h. Eighth Argument

The MCC asserts the PSC appears to have "misread" the density data in the record and, in turn, concluded that the redefined area that TCS wishes to serve is less dense, and therefore more costly to serve. Based on TCS's LFE, the area it serves in CMC's "study area" has 4.177 access lines per square mile, while CMC's entire study area has a density of 1.526 access lines per square mile, supporting a conclusion opposite to that which satisfied the PSC.

PSC Determination

The PSC correctly recited in Order 6723a, p. 17, the data contained in TCS's August 24, 2006, LFE. It is clear from the recited data that the density of the combined redefined study areas (.713) is less than that for the combined entire study areas (.803). It must follow that the MCC's argument is that the PSC reached a conclusion that is erred and not one that the PSC "misread" data in the LFE.

Therefore, there appear two possible aspects of the MCC's argument that the PSC reached an inappropriate conclusion. First, Order 6723a, p. 34, concludes "...if cost correlates to density, then the cost that TCS incurs must also be considerable relative to the cost other wireless carriers incur to serve the more urban areas of the country." Given the MCC's argument, the PSC must presume that the MCC finds this cost/density correlation illogical. If this was the MCC's intent, the PSC again must express puzzlement. If the MCC is suggesting that cost varies directly, not inversely, with density, then the PSC would expect national wireless carriers to have first put up towers in the least densely populated areas in the country. That is not the apparent marketing strategy taken by wireless carriers. If the MCC has evidence that suggests it is, for example, less costly to serve a single customer with a single tower than it is to serve thousands of customers with a single tower, such evidence and related argument was not presented.

Second, if the MCC's claim that the PSC "misread" density data is directed at the PSC's choice of the combined data, then the MCC's characterization of the PSC's having "misread" the

LFE is misleading. Order 6723a explicitly focused on the combined data in the LFE. This combined data was, as noted above, not misread but is exactly as the PSC restates in its order. If the MCC dislikes the PSC's decision to focus on the combined data, then its argument is misleading and the MCC has failed to provide a valid reason as to why the PSC should not look at the combined data (also see the PSC's response to the MCC's ninth argument).

i. Ninth Argument

MCC holds the PSC's statement, that TCS's density data is "relevant because there is arguably a community of interest that overlaps portions of the two ILEC's study areas," has no place in the underlying Order as "community of interest" is unrelated to redefinition.

PSC Determination

The PSC disagrees with the MCC's argument. The licenses TCS holds overlap two study areas and therefore there is, by proximity, an apparent community of interest. The MCC need only refer to TCS's response (Exhibit # 1) to DR MCC -001 to appreciate that CMC's study area is in effect two islands. The one island that TCS includes in this ETC petition is nearly surrounded by TTCA's study area. On closer focus (referencing TCS's attached Exhibit # 1 to its January 20, 2006, amended application) it is obvious that the towers that TCS has and intends to construct overlap the two underlying ILEC study areas. Importantly, even though TCS will have a tower in CMC's study area, such tower's coverage will spill over into TTCA's study area and enable service in the TTCA study area. Thus, due to the proximity of the two ILEC study areas and the redefined areas that TCS seeks to serve there is, in the PSC's estimation, an obvious community of interest that justifies looking at the combined data and not just the separate density data for the two ILECs. Also see the PSC's response to the MCC's sixth redefinition argument for detailed information in this regard. In turn, the combined data on access line density for the two ILECs suggests TCS is not selecting simply the high density (what the PSC would consider low cost) areas, what the PSC labeled "egregious" (also see the PSC's response to the MCC's sixth and eighth arguments). That TCS placed towers that result in customers being served in two different study areas is apparently a sound business decision if the

alternative is to be forced to put up two separate towers at a higher cost, with the likelihood that no customers get wireless service. The PSC has identified "community of interest" as a standard pertaining to telephone extended area service petitions. In the present case, the PSC finds a similar interest, related reasoning, and terminology to be relevant and reasonable.

j. Tenth Argument

MCC disputes the PSC's finding that TCS's "proposal" is an effort to advance universal service in rural areas of Montana. The MCC holds that this finding is an effort by the PSC to "bolster" its redefinition decisions. The MCC holds that this is, however, an ETC issue. Thus, if TCS is designated an ETC, it would receive subsidies even if it did not add a single customer to the system, thereby not advancing universal service or promoting competition.

PSC Determination

This tenth argument by the MCC has two separable aspects, each of which the PSC will address. First, as the PSC recognized in Order 6723a, p. 32, the two main issues in this case are not entirely separable. Thus, the PSC does not disagree with the MCC that TCS's "proposal" may be an ETC issue. The PSC does disagree with the MCC that it is entirely an ETC issue. The PSC, however, presumes, as it must given that MCC's argument is not clear, that by "proposal" the MCC meant to reference the issue of redefinition. If this presumption is wrong, then the PSC's response here, to infer what the MCC's argument is about, may be incorrect, a risk the PSC takes when attempting to decipher and then respond to an unclear argument. If presumed correctly, the PSC disagrees with the MCC's opinion that redefinition has no positive universal service benefits. Order 6723a finds that it is in the public interest for wireless service -- mobility -- to be made available. Given TCS satisfied the requirement to provide the nine supported services, in addition to its provision of wireless service to unserved areas, the PSC again finds that it is in the public interest to designate TCS as an ETC. TCS's designation serves to advance universal service and is in the public interest.

The second aspect of the argument regards the MCC's comment that TCS would receive subsidies even if it did not add a single customer to the system. The MCC raises, again, an

argument it has made in prior ETC petition dockets and that the PSC has previously addressed. This time, however, the MCC's approach is somewhat oblique. The PSC has previously addressed (*see e.g., Order 6518a, pp. 9, 11, 19, 37*) this MCC argument. The PSC will not now reverse the policy established in prior ETC petition dockets.

j. Eleventh Argument

MCC argues that there is no universal service requirement that customers have access to both wireline and wireless service.

PSC Determination

This MCC argument is clear and one with which the PSC agrees. The PSC, however, did not find that there was such a requirement. That said, it is a goal spelled out clearly in the '96 Act to advance the provision of universal service. The provision of wireless services helps to achieve this goal. Furthermore, there is no limitation on an ETC's receipt of FUSFs that provides mobility. Just as the FCC has found mobility to be a valid public interest consideration the PSC makes a similar finding (see also the second aspect of the above tenth argument).

3. MCC Arguments – Designation

The MCC made five arguments that involve the PSC's ETC designation determinations.

a. First Argument

The MCC asserts the PSC's conclusion that TCS surely owns sufficient facilities is "flatly contradicted" by the record. In this regard, the MCC adds there is no cogent explanation of why the agency has exercised its discretion in this manner. The MCC further adds the "... 'explanation' that 'surely' it has sufficient facilities..." to assume the conclusion that the PSC apparently wants to reach. And, because the conclusion is not satisfactorily explained, nor supported by substantial, credible evidence, it cannot be sustained.

PSC Determination

The PSC disagrees with the MCC's assessment of the record. First, TCS commits to use its own radio equipment and antennas at tower locations and TCS also commits to transmit its own radio signals (*Order 6723a, f.n. 3*). Second, TCS asserts to own one tower (*Order 6723a, p. 23*). Third, TCS commits to use its own base stations (*Order 6723a, p. 37*). Fourth, TCS asserts it will own all the assets associated with new construction (*Order 6723a, p. 27*). Therefore, the PSC does not agree with the MCC that the record contradicts, not to mention "flatly contradicted," the PSC's finding. TCS clearly owns and will continue to own facilities. If there is a bright-line standard on ownership, past and future, the MCC failed to illuminate that standard in its testimony and briefs. The MCC's apparent standard, that TCS does not own enough facilities, is not helpful.

b. Second Argument

The MCC argues that TCS's ETC petition should not be granted because it is not in the public interest. The MCC also restates its earlier argument, made under the above redefinition category of its motion, that if TCS is designated an ETC, it would receive subsidies even if no additional customers were added to the system. The MCC adds that TCS admits to "not provide a competitive service," would not compete with its parent and sister providers, and does not produce any of the benefits that competition will bring.

PSC Determination

The PSC previously approved of Mid-Rivers Cellular's ETC petition and SCI's ETC petition. In both of these dockets the applicants held that wireless is a complement to and not a substitute for landline service. Thus, as for the competition TCS provides to its landline affiliate, it is no different from Montana precedent on the subject. As for wireless-on-wireless competition the MCC, perhaps unintentionally, hits on a reason why the PSC approves of TCS's ETC petition: TCS will serve unserved areas. Because TCS is for the most part serving unserved areas how could there be competition? Whereas no other carrier has found it economically profitable, even with FUSFs, to provide wireless service to these sparsely populated and

apparently high-cost remote areas of the TTCA and CMC study areas, TCS has. TCS lists as the unserved areas it will serve to include: Cherry Ridge, Turner, Cleveland, Savoy, Chinook, Turner, Chester, and Harlem (*Order 6723a*, p. 5). Thus, the MCC cannot hold TCS liable for the lack of competition when it, and no other carrier, is willing to serve unserved areas. As TCS asserts, no other entities stepped forward to serve the remote areas included in the redefined service area (*Order No. 6723a*, f.n. 19).

c. Third Argument

The MCC argues that granting TCS ETC status will burden the USF without any corresponding public benefit.

PSC Determination

The PSC shares the MCC's concern over a growing FUSF. The PSC does not share the MCC's view that it was okay for other states and the FCC to approve of wireless designation petitions, but in Montana's case the consuming public should be denied the opportunity to have access to wireless services. It would be contrary to a key principle in § 254 of the '96 Act to follow the course of action the MCC recommends. That said, relative to large states wherein the FCC has granted ETC petitions, in the TCS instance the number of customers and the associated impact on the size of the FUSF will most likely be negligible.⁶

⁶ The historical growth in the amount of FUSFs that CETCs receive appears, in large part, due to designations by other states and the FCC. In 2006, Montana CETCs will receive \$7.2 million of the \$820 million in FUSFs that all CETCs receive. The FCC has, in the past also designated wireless carriers. The FCC designated Virginia Cellular an ETC in the face of an allegedly burdened FUSF. The FCC designated Nextel as an ETC in New York, Pennsylvania, Florida, Georgia, Alabama, etc., again apparently concluding Nextel's designation would not dramatically burden the FUSF. In contrast, Montana has unserved wireless areas that will likely have a, relatively speaking, miniscule impact on the overall size of the FUSF that CETCs receive. See PSC's June 6, 2007, Initial Comments to the FCC in WC 05-337 and CC 96-45.

d. Fourth Argument

The MCC argues that there is no USF requirement that customers have access to both wireline and wireless service.

PSC Determination

The PSC previously addressed this argument under the redefinition section.

e. Fifth Argument

The MCC argues that the PSC, after agreeing that TCS will not provide competitive service, simply dismissed the MCC's concerns by stating "...that it is not a problem." The MCC cites the PSC finding "...[T]he PSC will, in the future, also consider as part of its public interest criteria the impact of competition such a designation would bring to remote areas of Montana." The MCC follows this citation with the question: "What is the cogent explanation for why the Commission has exercised its discretion in this manner?" The MCC also asked: "Why is competition important in the next case but not in this one?"

PSC Determination

As for the first part of the MCC's argument asserting the PSC stated "...it is not a problem," the PSC was referring to the cited precedent cases (e.g., SCI), wherein the PSC approved of the wireless affiliate's petition to be designated an ETC. In the SCI docket, the MCC actually intervened but filed no testimony in opposition to SCI's petition. Nor did the MCC file a brief or a motion for reconsideration of the PSC's decision to designate SCI an ETC.

Second, the PSC has not found (e.g., SCI), and nor does it now find, the absence of competitive pressure between the two affiliates to be grounds to deny the ETC petitions. At present, there is no contravening testimony that wireless service is by and large a complementary service to landline service.

Third, as the MCC must be aware, competition is not an explicit principle in the '96 Act's § 254 goal of universal service. The PSC must however dispute the MCC's characterization of the PSC's findings. The MCC did not explain what type of competition it holds is an apparently

necessary condition for approval of TCS's ETC petition. Is it wireline versus wireless and, or, wireless on wireless? The PSC has already addressed the former. As for the latter, it is hard for TCS to compete if it is the only wireless carrier willing to serve an unserved area. Presumably, the MCC would prefer that the PSC deny all such rural Montana customers the benefits of advanced technology, mobility that is, simply because there is no competitor. The MCC has held out competition as an ETC bar that TCS has not cleared. However, as economists can attest, the relevance of competition is a two-edged sword in terms of whether there are public benefits. As the FCC has stated: "*...in certain rural areas, competition may not always serve the public interest and that promoting competition in these areas must be considered, if at all, secondary to the advancement of universal service. A principal purpose of section 254 is to create mechanisms that will sustain universal service as competition emerges....For this reason, we reject assertions that competitive neutrality has no application in rural areas or is otherwise inconsistent with section 254.*" The PSC has considered the merits of competition in this case and it will do so again in future cases.

D. PSC CONCLUSIONS

The PSC has jurisdiction over applications for designation as an ETC in Montana. 47 U.S.C. § (e) (2); § 69-8-840, MCA.

Consideration of the public interest applies in all applications for designation as an ETC. 47 U.S.C. § 214(e) (2), ("*[u]pon request and consistent with the public interest, convenience, and necessity" a state commission may designate additional eligible telecommunications carriers*). The PSC has considered the public interest in this proceeding and determines designation of TCS as an ETC is in the public interest.

The PSC has adopted rules governing the designation of ETCs and the maintenance of status as an ETC. See ARM 38.5.3201 through 38.5.3230; PSC Docket No. L-04.07.5-RUL. The rules, as adopted, will apply to all ETCs in Montana, including TCS. The rules as existing and as may be amended, may qualify, modify, or replace one or more of the terms and conditions in this Order.

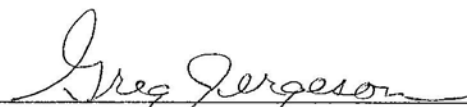
All pending motions, objections, and arguments not specifically acted upon in this Order are denied to the extent denial is consistent with this Order.

E. PSC ORDER

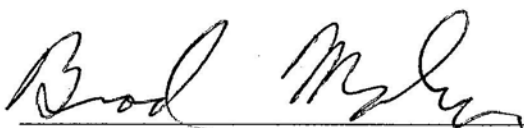
IT IS HEREBY ORDERED that the motions for reconsideration filed by MTA and MCC are denied and PSC Order No. 6723a is affirmed, with clarifications discussed above.

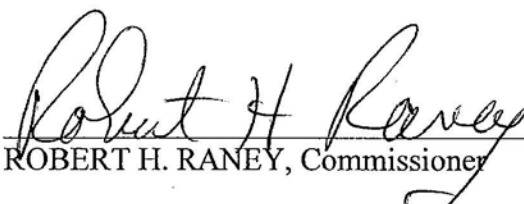
Done and dated this 26th day July, 2007, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

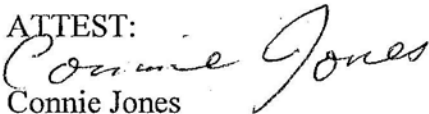

GREG JERGESON, Chairman


DOUG MOOD, Vice-Chairman


BRAD MOLNAR, Commissioner


ROBERT H. RANEY, Commissioner


KEN TOOLE, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that a copy of a **FINAL ORDER NO. 6723b ORDER ON RECONSIDERATION** issued in D2004.1.6 in the matter of Triangle Communication System, Inc. - Application for Designation as an Eligible Telecommunications Carrier has today been served on all parties listed on the Commission's most recent service list, updated 5/17/06, by mailing a copy thereof to each party by first class mail, postage prepaid.

Date: August 14, 2007

Debbie George
For The Commission

Intervenors:

3 Rivers Telephone Cooperative, Inc.

Cable & Communications Corporation

Mid-Rivers Telephone Cooperative

Montana Consumer Counsel

Montana Telecommunications Association

8/14/2007

Utility - Docket Service List

Docket no: D2004.1.6

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8/14/2007

Utility - Docket Service List

Docket no: D2004.1.6

Interested Persons

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MICHAEL STRAND STRAND & ASSOCIATES PLLC	PO BOX 1121 HELENA	MT 59624
--	-----------------------	----------

PHIL MAXWELL 3 RIVERS TELEPHONE COOPERATIVE	PO BOX 836 DEER LODGE	MT 59722
--	--------------------------	----------

Exhibit C

Exhibit C

Rural Study Areas & Wire Centers Served by TCS in their Entirety*

Triangle Telephone Cooperative Association, Inc.

Chinook
Turner
Hays
Whitewater
South Malta
Chester

Central Montana Communications, Inc.

Harlem
Malta
Dodson

* This exhibit was prepared for redefinition purposes only. This exhibit does not contain the rural and non-rural study areas and wire centers in which TCS was designated as an ETC but for which it does not seek redefinition.

Exhibit D

COPY
COPY

January 16, 2004

Mr. Steve Vick
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59620-2601

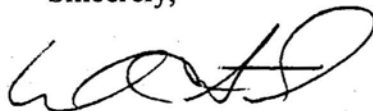
Re: Petition for ETC designation – Triangle Communications/System, Inc.

Dear Mr. Vick:

Please find attached for filing the Petition of Triangle Communications System, Inc. for Eligible Telecommunications Carrier designation in the indicated rural telephone company service area(s). Triangle Communications System, Inc. hereby requests that the Commission establish a docket for the processing of this Petition.

Triangle Communications System, Inc. is aware that the Commission must find the designation of Triangle Communications System, Inc. to be in the public interest as a prerequisite to such designation. In this regard, Triangle Communications System, Inc. supports the impending filing of a joint Petition for rulemaking by MITS and MTA that will suggest Commission rules for the determination of the public interest. Triangle Communications System, Inc. therefore requests that once a docket has been established for the processing of this petition, that docket (and any other dockets involving ETC applications in areas served by rural telephone companies) be temporarily stayed or suspended upon the filing of MITS and MTA's joint Petition for Rulemaking until such time as the Commission has processed the joint Petition for Rulemaking.

Sincerely,



Michael C. Strand, Counsel

cc:

Montana Consumer Counsel

MITS, P.O. Box 5237, 2021 11th Avenue, Suite 12, Helena, MT 59601-5237

Phone: 406-443-1940 / Fax: 406-443-2880

E-Mail: info@mitsel.com / Web Site: www.mitsel.com

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

COPY

In the matter of the petition)
By TRIANGLE)
COMMUNICATIONS)
SYSTEM, INC.)
For Designation as an)
Eligible Telecommunications)
Carrier.)

Utility Division

Docket No. _____

PETITION OF TRIANGLE COMMUNICATIONS SYSTEM, INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

I. INTRODUCTION

Triangle Communications System, Inc., P.O. Box 1220, Havre, Montana 59501, pursuant to § 47 U.S.C. 214(e) (2) and § 69-3-840, MCA, hereby petitions the Montana Public Service Commission (Commission) for designation as an Eligible Telecommunications Carrier (ETC) within the Montana exchanges served by Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.

Triangle Communications System, Inc. meets all of the statutory requirements for designation as an Eligible Telecommunications Carrier (ETC). Designating Triangle Communications System, Inc. as an ETC will serve the public interest by providing customers in the identified exchanges a choice of communication providers, by allowing Triangle Communications System, Inc. to upgrade and improve its service through the

use of Universal Service Funds, and by meeting any technical and service quality standards established by the Commission as public interest criteria.

Triangle Communications System, Inc. believes it has a fiduciary responsibility to seek ETC designation within the identified exchanges.

Triangle Communications System, Inc. encourages the Montana Public Service Commission to expedite rules establishing minimum service quality standards applicable to ETC designations and certifications within the State of Montana. It is the intention of Triangle Communications System, Inc. to fully comply with such minimum service quality standards as established by the Commission as a prerequisite for ETC designation and continued ETC certification.

It is the understanding of Triangle Communications System, Inc. that Montana Independent Telecommunications Systems (MITS) and the Montana Telecommunications Association (MTA) will be jointly filing with the Commission proposed minimum service quality standards for ETC designation and certification and requesting that the Commission initiate an expedited rule-making proceeding to consider the proposed rules. It is Triangle Communications System, Inc.'s understanding that the proposal of MITS and MTA will include a request that the PSC stay or suspend all pending ETC applications in the service areas of rural telephone companies until such time that the PSC adopts final rules addressing minimum service quality standards for ETC designation and certification. Triangle Communications System, Inc. intends to support the rules proposed by MITS and MTA, the request for an expedited rule-making proceeding, and request to stay or suspend all pending ETC applications in the service

areas of rural telephone companies until the conclusion of the expedited rule-making proceeding.

Triangle Communications System, Inc. will file initial testimony supporting its ETC application pursuant to a Procedural Order issued by the Montana Public Service Commission in this proceeding.

II. REQUIREMENTS FOR ETC DESIGNATION

Triangle Communications System, Inc. will offer all services required for designation as an Eligible Telecommunications Carrier.

§ 47 U.S.C. 214(e) (1)(A) requires a common carrier designated as an ETC to offer, throughout the service area for which the designation is received, the services that are supported by Federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services. The FCC has identified the following services as those supported by the Federal Universal Service Fund and therefore required of ETCs:¹

- 1) Voice grade access to the public switched network;
- 2) Access to free of charge "local usage" defined as an amount of minutes of use of exchange service;
- 3) Dual tone multi-frequency signaling or its functional equivalent;
- 4) Single-party service or its functional equivalent;
- 5) Access to emergency services;
- 6) Access to operator services;
- 7) Access to interexchange services;

¹ 47 C.F.R. § 54.101(a)(1)-(9)

- 8) Access to directory assistance; and
- 9) Toll limitation services for qualifying low-income customers

Triangle Communications System, Inc. will provide all services designated for support as set forth in 47 C.F.R. § 54.101(a) (1)-(9).

Triangle Communications System, Inc. will advertise and promote its universal service offerings.

§ 47 U.S.C. 214(e) (1) (B) requires a carrier designated as an ETC to advertise the availability of such services and the charges using media of general distribution. Triangle Communications System, Inc. intends to advertise its services throughout its requested designated service area through several different media, including newspaper, television, radio, and public meetings to promote its service offerings. Once designated, Triangle Communications System, Inc. will advertise the availability of and charges for its universal service offerings through media of general distribution.

Designation of Triangle Communications System, Inc. as an ETC is in the public interest.

In the areas served by rural telephone companies, in addition to providing the statutorily mandated services noted above, additional ETC designation must be in the public interest.² The designation of Triangle Communications System, Inc. as an ETC will clearly serve the public interest by providing customers in the designated service areas a choice of communications providers and communication technologies. Customers in rural areas are to have access to telecommunication and information services that are

² § 47 U.S.C. 214(e) (2)

reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.³ For this reason, Triangle Communications System, Inc. intends to comply with any technical and service quality standards the Commission may establish as public interest criteria. The designation of Triangle Communications System, Inc. as an ETC would further provide Triangle Communications System, Inc. with the financial ability to continue to provide universal service offerings to these customers. The public interest would also be served by the ETC designation by enhancing Triangle Communications System, Inc.'s ability to contribute to public safety needs.

III. CONCLUSION

Triangle Communications System, Inc. provides the supported services, satisfies all applicable requirements, and can and will meet the obligations of an ETC. Designation of Triangle Communications System, Inc. as an ETC is in the public interest. Designation as an ETC would allow Triangle Communications System, Inc. to increase wireless access in rural service areas and provide a choice of communication providers in the requested service areas.

Triangle Communications System, Inc. respectfully requests the Commission designate it as an Eligible Telecommunications Carrier within the Montana exchanges served by Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc., in accordance with the provisions of the Communications Act of 1934, as amended.

³ § 47 U.S.C. 254(b) (3)

Respectfully submitted this 16th day of January, 2004.

By: 

Michael C. Strand, Counsel
Triangle Communications System, Inc.

Exhibit E



Providing Professional Services to
the Telecommunications Industry Since 1994

COPY

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2005 NOV 23 AM 11:09

PUBLIC SERVICE
COMMISSION

November 23, 2005

ORIGINAL

Kate Whitney
Montana Public Service Commission
P.O. Box 202601
Helena, MT 59620-2601

Re: D2004.1.6 - Triangle Communication System, Inc. – Amended Petition for
ETC designation

Dear Kate:

I am enclosing an original and ten copies of an Amended Petition by Triangle
Communication System, Inc. (TCS), for designation as an eligible telecommunications
carrier in Docket D2004.1.6.

Please feel free to give us a call if there are any questions at all concerning TCS's
amended petition.

Sincerely,

Michael C. Strand
CEO and General Counsel
MITS

cc:

Montana Consumer Counsel

MITS, P.O. Box 5237, 2021 11th Avenue, Suite 12, Helena, MT 59601-5237

Phone: 406-443-1940 / Fax: 406-443-2880

E-Mail: mits@mitstel.com / Web Site: www.mitstel.com

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

In the matter of the petition by TRIANGLE)	
COMMUNICATION SYSTEM, INC.)	Utility Division
For Designation as an Eligible)	
Telecommunications Carrier.)	Docket No. D2004.1.6

AMENDED PETITION OF TRIANGLE COMMUNICATION SYSTEM, INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

I. INTRODUCTION

Triangle Communication System, Inc., P.O. Box 1220, Havre, Montana 59501, hereby amends its petition filed with the Montana Public Service Commission (Commission) on January 16, 2004, for designation as an Eligible Telecommunications Carrier (ETC) within the Montana exchanges served by Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.

Triangle Communication System, Inc. (TCS) originally requested ETC designation for the entire study areas of Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.¹ TCS hereby amends its petition to request that the Commission redefine the service area for both Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc. from those companies' study areas to individual wire centers that fall within TCS' licensed cellular wireless service area.

¹ Docket No. D2004.1.6, filed January 16, 2004.

II. SERVICE AREA REDEFINITION PROCESS

Section 214(e)(5) of the Federal Telecommunications Act of 1996 provides that states may establish geographic service areas within which competitive ETCs such as TCS are required to comply with universal service obligations and are eligible to receive universal service support.² For an area served by rural incumbent LECs such as both Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc., however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Federal Communications Commission (FCC) and the States, after taking into account the recommendations of a Federal-State Joint Board (Joint Board), establish a different definition of service area for such company."³ This process of changing the incumbent LEC's service area — and therefore the competitive ETC's service area — is known as the redefinition of a service area. The FCC adopted section 54.207(c) of its rules to implement this requirement.⁴

²See 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.")

³*Id.*

⁴Section 54.207(c) of the Commission's rules provides the mechanism by which a state commission may propose to redefine a rural incumbent LEC's service area for purposes of determining universal service obligations and support. See 47 C.F.R. §§ 54.207(a), (c). The Commission has authority to propose a service area redefinition on its own motion under section 54.207(d) of the Commission's rules, but such redefinition would not go into effect without the agreement of the relevant state commission. See 47 C.F.R. § 54.207(d). Under section 54.207(c)(1), a state may petition the Commission for a redefinition or a party may petition the Commission with the state's proposal to redefine. The petition must contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural carrier. See 47 C.F.R. § 54.207(c)(1). Section 54.207(c)(3) provides that the Commission may initiate a proceeding to consider a state commission's proposal to redefine the area served by a rural incumbent LEC within 90 days of the release date of a public notice. See 47 C.F.R. § 54.207(c)(3). If the Commission initiates a proceeding to consider the petition, the proposed definition will not take effect until both the state commission and the Commission agree upon the definition of a rural carrier service area, in accordance with section 214(c)(5) of the Act. If the Commission does not act on a petition to redefine a service area within 90 days of the release of the public notice, the definition proposed is deemed approved by the Commission and takes effect in accordance with state procedures. See 47 C.F.R. § 54.207(c)(3)(ii).

After receiving recommendations⁵ from the Joint Board, the FCC released a *Report and Order* on March 17, 2005, (CC 96-45, FCC 05-46, Adopted Feb 25, 2005), that provided guidance on the procedures applicable to the redefinition of rural service areas. In paragraph 79 of its *2005 ETC Order*, the FCC stated its intention to apply the standards previously set forth in its *Highland Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order* when considering whether to grant a petition for redefinition.

In the *Virginia Cellular ETC Designation Order* (*Virginia Cellular Order*), the FCC determined that when defining a service area other than the study area it would take into account three factors: (1) minimizing cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.⁶

The first factor to consider is whether redefinition of the study area will present any risk of creamskimming. As the FCC explained in paragraph 26 of its *Highland Cellular ETC Designation Order*,⁷ rural cream skimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area.⁸ TCS is clearly not

⁵ See *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd 4257, 4258, para. 2 (2004) (*Recommended Decision*).

⁶ In the *Matter of Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338, adopted December 31, 2003, released January 22, 2004 (*Virginia Cellular ETC Order*).

⁷ See *In the Matter of Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37, adopted February 24, 2004, released April 12, 2004 (*Highland Cellular ETC Order*).

⁸ See also: *1996 Recommended Decision*, 12 FCC Rcd at 180, para. 172. "Creamskimming" refers to instances in which a carrier serves only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., *Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

creamskimming. TCS seeks to be designated within its entire FCC-licensed cellular service area. It has not picked only certain areas within its licensed cellular service area.

The second factor that must be considered is whether redefinition will impact the regulatory status of the affected rural telephone company or companies under the Telecommunications Act of 1996. There is nothing that would affect the regulatory treatment of either Triangle Telephone Cooperative Association, Inc. or Central Montana Communications, Inc. Also, the FCC has made the determination that redefinition of the study area does not affect embedded costs of the company or the amount of universal service support that it receives.⁹

The third factor to be considered is whether any administrative burdens will result from the redefinition of the service area. The administrative ease of calculating costs on a less-than-study area level is not an issue because any federal universal service support available to TCS would be based on the per-line support available to the incumbent ETCs. In the *Virginia Cellular ETC Order*, the FCC determined that redefining the rural telephone company service areas will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent local exchange company study area. The redefinition does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. The FCC found that the concern that redefining rural service areas would impose additional administrative burdens on affected rural telephone companies was not at issue.¹⁰

⁹ In the matter of Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum and Opinion and Order, FCC 03-338, Paragraphs 41 and 43, released January 23, 2004.

¹⁰ Id. ¶ 44

Through its testimony, TCS will demonstrate that redefining the service areas of both Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc. that are applicable for TCS' ETC status and approving TCS' application for ETC designation for those redefined service areas are in the public interest.

III. LIST OF WIRE CENTERS

The Triangle Telephone Cooperative Association, Inc. wire centers that would comprise the redefined study area applicable to TCS are: Chinook, Turner, Hays, Whitewater, South Malta, and Chester.

The Central Montana Communications, Inc. wire centers that would comprise the redefined study area applicable to TCS are: Harlem and Malta.

IV. CONCLUSION

Triangle Communication System, Inc. (TCS) originally requested ETC designation for the entire study areas of Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.¹¹ Triangle Communication System, Inc. provides the supported services, satisfies all applicable requirements, and can and will meet the obligations of an ETC within service areas of Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc. that fall within TCS's licensed cellular wireless service area. TCS hereby amends its petition to request ETC designation for the individual wire centers that fall within TCS' licensed cellular wireless service area.

¹¹ Docket No. D2004.1.6, filed January 16, 2004.

TCS further herein petitions the Montana Public Service Commission to redefine, within this ETC proceeding, the service area for Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc. from those companies' entire study areas to those companies' individual wire centers falling within TCS' licensed cellular wireless service area.

TCS requests a determination from the Commission that its amended petition for ETC designation is in the public interest and that such ETC designation will allow it to increase wireless access and provide competitive choices in its rural service areas. TCS respectfully requests that the Commission designate it as an Eligible Telecommunications Carrier within the Montana exchanges identified in its amended petition, TCS further requests that the Commission submit a petition to the Federal Communications Commission seeking its concurrence with and agreement to the redefinition of the service areas of Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc., pursuant to the provisions of the Communications Act of 1934, as amended.

Respectfully submitted this 23rd day of November 2005.

By: 

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Phil Maxwell
Regulatory Affairs Specialist
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Exhibit F

ORIGINAL



Montana
Independent
Telecommunications
Systems

Providing Professional Services to
the Telecommunications Industry Since 1994

January 20, 2005

COPY

RECEIVED BY
2005 JAN 20
PUBLIC SERVICE
COMMISSION

Kate Whitney
Montana Public Service Commission
P.O. Box 202601
Helena, MT 59620-2601

Re: D2004.1.6 - Triangle Communication System, Inc. – Amended Petition for
ETC designation

Dear Ms. Whitney:

On November 23, 2005, Triangle Communication System, Inc. (TCS) filed its
Amended Petition for designation as an eligible telecommunications carrier in Docket
D2004.1.6.

Section III of the amended petition lists the wire centers identified for the
proposed redefined study area applicable to TCS. The Dodson exchange was
inadvertently omitted from the list.

I am enclosing a Further Amended Petition of Triangle Communication System,
Inc. The only change is substitution language on page 5 that now accurately lists all the
exchanges proposed for study area redefinition:

Chinook, Turner, Hays, Whitewater, South Malta, Chester, Harlem, Malta, and
Dodson.

Thank you for your cooperation in substituting the petition filed today for the
petition filed on Nov. 23. Please let us know if there are any concerns or questions in this
matter.

Sincerely,

Michael C. Strand
CEO and General Counsel
MITS

cc:
Parties of record

MITS, P.O. Box 5237, 2021 11th Avenue, Suite 12, Helena, MT 59601-5237
Phone: 406-443-1940 / Fax: 406-443-2880
E-Mail: mits@mitstel.com / Web Site: www.mitstel.com

 **ORIGINAL**

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

RECEIVED BY
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PUBLIC SERVICE
COMMISSION

In the matter of the petition by TRIANGLE)
COMMUNICATION SYSTEM, INC.) Utility Division
For Designation as an Eligible)
Telecommunications Carrier.) Docket No. D2004.1.6

FURTHER AMENDED PETITION OF TRIANGLE COMMUNICATION SYSTEM, INC.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

I. INTRODUCTION

Triangle Communication System, Inc., P.O. Box 1220, Havre, Montana 59501, hereby amends its petition filed with the Montana Public Service Commission (Commission) on January 16, 2004, for designation as an Eligible Telecommunications Carrier (ETC) within the Montana exchanges served by Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.

Triangle Communication System, Inc. (TCS) originally requested ETC designation for the entire study areas of Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc.¹ TCS hereby amends its petition to request that the Commission redefine the service area for both Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc. from those companies' study areas to individual wire centers that fall within TCS' licensed cellular wireless service area.

¹ Docket No. D2004.1.6, filed January 16, 2004.

II. SERVICE AREA REDEFINITION PROCESS

Section 214(e)(5) of the Federal Telecommunications Act of 1996 provides that states may establish geographic service areas within which competitive ETCs such as TCS are required to comply with universal service obligations and are eligible to receive universal service support.² For an area served by rural incumbent LECs such as both Triangle Telephone Cooperative Association, Inc. and Central Montana Communications, Inc., however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Federal Communications Commission (FCC) and the States, after taking into account the recommendations of a Federal-State Joint Board (Joint Board), establish a different definition of service area for such company."³ This process of changing the incumbent LEC's service area — and therefore the competitive ETC's service area — is known as the redefinition of a service area. The FCC adopted section 54.207(c) of its rules to implement this requirement.⁴

²See 47 U.S.C. § 214(e)(5) ("The term 'service area' means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms.")

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⁸ See also: 1996 *Recommended Decision*, 12 FCC Rcd at 180, para. 172. "Creamskimming" refers to instances in which a carrier serves only the customers that are the least expensive to serve, thereby undercutting the ILEC's ability to provide service throughout the area. See, e.g., *Universal Service Order*, 12 FCC Rcd at 8881-2, para. 189.

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Respectfully submitted this 20th day of January 2006.

By: 

Michael C. Strand, Counsel
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DOCKET D2004.1.6

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